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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF U S WEST )  
COMMUNICATIONS, INC.'S )  
COMPLIANCE WITH SECTION 271 OF THE ) DOCKET NO. T-00000A-97-238  
TELECOMMUNICATIONS ACT OF 1996 )  
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**COMMENTS OF AT&T REGARDING STAFF'S COMPLIANCE REPORTS  
AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR  
CHECKLIST ITEMS 3, 7 AND 10**

AT&T Communications of the Mountain States, Inc. and AT&T Local Services on behalf of TCG Phoenix ("AT&T") submit these comments to Staff's Reports on U S WEST's Compliance and Staff's proposed Findings of Fact and Conclusions of Law for Checklist Items 3, 7 and 10 ("Staff Report").

**INTRODUCTION**

In these comments, AT&T identifies issues that were raised during the course of the Arizona workshops on these checklist items that have not been fully reflected in the Staff Report. In addition, the workshops addressing these checklist items began nearly one year ago. Since that time, further discussions on these checklist items have occurred in other states. As a result of these discussions, Qwest has agreed to make further modifications to its Statement of Generally Available Terms ("SGAT"). None of those changes for these checklist items are state-specific requirements, but instead were the result of negotiations between Qwest and various intervenors in those proceedings. As an

example, Qwest has made additional revisions to the rights-of-way section of the SGAT (Section 10.8) to reflect agreements reached in subsequent workshops in other states, and Qwest has modified SGAT language relating to the granting of a non-exclusive "license" to CLECs regarding directory assistance lists, which is discussed under Checklist Item 7.

Qwest has stated that it intends to implement a region-wide Statement of Generally Available Terms and Conditions ("SGAT"), with the exception of those state-specific requirements that compel unique SGAT language for a particular state. In its comments below, AT&T has attempted to highlight some revisions to the SGAT that have been agreed to by Qwest in subsequent workshops in other states. In addition, attached to these comments are exhibits that identify what AT&T believes to be all of the SGAT revisions that have been agreed to in other workshops. Accordingly, these SGAT revisions should be incorporated into the Arizona SGAT before this Commission determines that Qwest is in compliance with these checklist items.

In addition, certain issues relating to access to poles, ducts, conduits and rights-of-way (collectively referred to herein as "ROW") that were initially characterized as MDU access issues by Qwest and deferred to the subloop workshop in Arizona, but which Qwest in Colorado concluded were broader in scope than subloop, and should not be deferred. These issues should be addressed in Arizona before Qwest is determined to be in compliance with Checklist Item No. 3. This issue is addressed in more depth below.

Finally, certain additional legal issues concerning Checklist Items 3, 7 and 10, which are relevant here were raised in subsequent workshops and should be made part of the record in Arizona. These issues are also discussed below.

Based upon the discussions that have occurred in other states on these checklist items, the Arizona record is stale and should be supplemented to reflect SGAT revisions that have been agreed to in other states. An additional one-day workshop should be scheduled to bring the Arizona record up to date on the status of these checklist items, including other language revisions that have been proposed and disputed, and to discuss other disputed issues that have arisen because of these ongoing discussions.

**I. CHECKLIST ITEM 3**

Contrary to the Staff's Report, there remain several disputed issues that are not reflected in Staff's Report. In fact, there have been subsequent negotiations in the Section 271 workshops in Colorado, Washington, Oregon and the multistate. As a result the Arizona record is stale.

First, legal decisions have been rendered which require Qwest to revise its SGAT on reciprocal access to ROW.

In addition, numerous issues, not initially raised in Arizona, have been raised by AT&T and others in these subsequent workshops relating to access to ROW. Qwest has, in many cases, agreed to revisions to its SGAT to resolve these issues, although some have been disputed and are at impasse.

Next, some issues that were initially deferred in Arizona have been addressed in subsequent workshops in other states in connection with Checklist Item 3 at Qwest's request. As a result, some new language revisions have been agreed to and some new disputed issues have arisen.

The comments below more fully address each of these areas.

**A. Qwest's Imposition of Reciprocal Obligations for Access to Rights-Of-Way is Unlawful.**

In its SGAT, Qwest attempts to impose upon CLECs a reciprocal obligation to provide access to ROW. Specifically, Section 10.8.1.4 specifies that: “[p]ursuant to 47 U.S.C. Section 251(b)(4), each party shall have the duty to afford access to its poles, ducts conduits and rights-of-way of telecommunications services to the other party . . .” Throughout the workshops, AT&T took the position that the Act and the FCC’s implementing rules and orders obligate Qwest to provide access to poles, ducts, conduits and rights of way. They do not obligate the CLECs to do the same. However, at the time of the first workshop, the Arizona U. S. District Court had ruled that reciprocal access to ROW was not inconsistent with the Act and the FCC’s implementing orders and that the issue was under consideration at the Ninth Circuit. Accordingly, Section 10.8.1.4 was not revised to eliminate the reciprocal access obligation. However, at the time, Qwest and AT&T agreed to be bound by whatever ruling was issued by the Ninth Circuit. The Ninth Circuit has now ruled that the imposition of reciprocal access obligations on CLECs is inconsistent with the Act, as interpreted by FCC implementing order. Therefore, Section 10.8.1.4 should be revised accordingly.

Section 251(b)(4) of the Act imposes on each LEC “the duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 of this title.” Section 224(a)(5) of the Act states that, for purposes of § 224, “the term ‘telecommunications carrier’ (as defined in § 153 of this title) does not include any incumbent local exchange carrier as defined in § 251(h) of this title.” (Emphasis added). Although CLECs and Qwest may both be telecommunications carriers as

defined in 47 U.S.C. § 153, under Section 224(a)(5), CLECs are telecommunications carriers, but Qwest is not.

This is precisely the position articulated by the FCC in its Rules and in paragraph 1231 of the *Local Competition Order*.<sup>1</sup> Specifically, Section 51.219 of the Rules provides that “[t]he rules governing access to rights of way are set forth in part 1, subpart J of this chapter.” Under the part 1, subpart J of the FCC’s Rules, only a “telecommunications carrier” is entitled to reciprocal access (*id.* § 1.1403(a)), and “the term telecommunications carrier . . . does not include . . . incumbent local exchange carriers.” *Id.* § 1.1402(h). Similarly, in paragraph 1231 of the *Local Competition Order*, the FCC states:

In addition, incumbent LECs cannot use section 251(b)(4) as a means of gaining access to the facilities or property of a LEC. A LEC's obligation under section 251(b)(4) is to afford access "on rates, terms, and conditions that are consistent with section 224." Section 224 does not prescribe rates, terms, or conditions governing access by an incumbent LEC to the facilities or rights-of-way of a competing LEC. Indeed, section 224 does not provide access rights to incumbent LECs. We cannot infer that section 251(b)(4) restores to an incumbent LEC access rights expressly withheld by section 224. We give deference to the specific denial of access under section 224 over the more general access provisions of section 251(b)(4). Accordingly, no incumbent LEC may seek access to the facilities or rights-of-way of a LEC or any utility under either section 224 or section 251(b)(4).

In a recent decision, the Ninth Circuit concluded that, under the Hobbs Act, it was bound by the interpretation of the FCC found in paragraph 1231 of the *Local Competition*

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<sup>1</sup> See 47 C.F.R. §§ 1.1403(a), 1.1402(h), § 51.219 and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996), *aff'd in part and vacated in part sub nom., Competitive Telecommunications Ass'n v. FCC*, 177 F.3d 1068 (8<sup>th</sup> Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8<sup>th</sup> Cir. 1997), *aff'd in part and remanded, AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999), ¶ 1231. (“*Local Competition Order*.”)

*Order*.<sup>2</sup> Under the Hobbs Act, 28 U.S.C. ¶ 2342, exclusive jurisdiction to review orders of the FCC is vested in the Courts of Appeals. Such review of the *Local Competition Order* was conducted by the Eighth Circuit. No RBOC appealed the determination made by the FCC in Paragraph 1231 regarding reciprocal access to ROW. Accordingly, the interpretation in paragraph 1231 of the *Local Competition Order* is legally binding. The Ninth Circuit's decision has not been appealed and is, therefore, legally binding. Qwest's SGAT is inconsistent with the conclusion of the FCC that the obligations of Section 251(b)(4) of the Act are not reciprocal.

Section 10.8.1.4 of the SGAT must be revised to remove all requirements for reciprocal access before Qwest can be deemed to be in compliance with Checklist Item 3.

**B. Issues Addressed and Resolved Via Agreed-To SGAT Revisions in Other State Section 271 Workshops.**

In subsequent workshops on Checklist Item 3 in other states, numerous revisions have been agreed to by Qwest to the ROW section of the SGAT, Section 10.8. Attached hereto are several exhibits, which collectively identify most of the changes that have been made to Section 10.8 in the other Section 271 workshop. Exhibit A is a redlined excerpt of Section 10.8, which was taken from the SGAT provided by Qwest in the Oregon Section 271 workshop. Exhibit B is a comparison of Qwest's Arizona SGAT Third Revision submitted to the Arizona Commission in July 2000 with Qwest's most recent SGAT submission in Colorado on January 15, 2001. Exhibit C compares the Exhibit D ROW contractual documents submitted with the Arizona SGAT Third Revision and the

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<sup>2</sup> *U S WEST Communications v. Hamilton*, 2000 WL 1335548 (9<sup>th</sup> Cir. Sept. 13, 2000). While this decision concerns the appeal from the Oregon U. S. District Court decision involving the Oregon AT&T-U S WEST arbitration agreement, this case was heard at the same time as the appeal of the Arizona AT&T-U S WEST arbitration agreement and was the case that Judge Panner relied on in his ruling in the U. S. District Court case on the Arizona AT&T-U S WEST arbitration agreement requiring reciprocal access to ROW.

recent Colorado SGAT. A review of Exhibits A, B and C reveals that there have been substantial and significant changes made to the SGAT since the Arizona workshops were conducted. Some of the revisions reflected in Exhibits A, B and C are agreed to and some are disputed. AT&T will highlight some of the SGAT provisions that have been agreed to by Qwest subsequent to the Arizona workshop in this section and, in the next section, will address those issues that are now in dispute as a result of these ongoing discussions.

An example of the SGAT changes agreed to in other state workshops follows. AT&T raised a concern that Section 10.8.2.5 ambiguously limits Qwest's obligations to construct, install, modify or place Poles/Innerduct as required by the Pole Attachment Act of 1934 or as otherwise "expressly" provided in the SGAT and that the SGAT should incorporate all other relevant state and municipal laws in this regard. Qwest modified Section 10.8.2.5 to address this concern.

AT&T asserted that, in Section 10.8.2.8, the SGAT obligated all CLECs to obtain the necessary authority to occupy ROW and/or Poles/Innerduct. While perfectly appropriate, Qwest failed to obligate itself to provide agreements that it may have in respect to such ROW or Poles/Innerduct upon the request of the CLEC, thereby unnecessarily hampering the CLEC from concluding its agreement with the owners of these rights. Qwest modified this section and resolved AT&T's concern.

In Section 10.8.2.14, Qwest's SGAT improperly allowed Qwest to recover the costs of any inspection conducted by Qwest in which a violation, hazard or other breach of the SGAT is detected, without establishing a materiality standard for qualifying for this right to recovery, thereby incenting Qwest to ascertain minor or inconsequential

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issues to afford itself recovery. Qwest revised this section to address AT&T's concerns. Further, in Section 10.8.2.15 and 10.8.2.16, Qwest had set up the curious dichotomy of requiring CLECs to pay for all inspections during construction and afterwards, irrespective of the construction being performed or the reason for the inspection. In effect, Qwest was not assuming any responsibility for any inspection costs. Qwest revised these sections to address AT&T's concerns.

In Section 10.8.2.18, Qwest reserved to itself the right to terminate an order "for cause" but failed to limit the definition of what constitutes cause. Qwest revised this section.

In Section 10.8.2.20, Qwest conditioned a CLEC's access to ROW on the "requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act . . .," all of which are incorporated into the SGAT by reference. Second, this paragraph makes reference to "U S WEST's procedures governing its standard maintenance practices," but the paragraph does not explain these "procedures," does not incorporate such "procedures" into the SGAT by reference (as it does with the others mentioned previously) and, does not make clear whether these "procedures" supplement or supercede the standards mentioned previously. AT&T raised concerns regarding this section, which Qwest resolved with modifications.

Finally, AT&T identified problems with Qwest's labeling of its SGAT sections, which appeared to limit the applicability of the various sections. Qwest revised the SGAT to fix these concerns.

**C. Other Issues Addressed in the Workshops In Other States Where the Parties are at Impasse and Which Must Be Resolved Before Qwest Can Be Deemed to Be in Compliance With Checklist Item 3.**

**1. As a Matter of Law, Qwest's SGAT Does Not Comply With the FCC's Requirement that Qwest Grant or Deny All Requests For Access to Poles, Ducts, Conduits, and Rights-of-Way Within 45 Days.**

In Section 10.8.4 of the SGAT, in general, and in modified section 2.2 of Exhibit D thereto, which is specifically referenced in that section, Qwest has outlined its obligations to respond to requests for access to ROW. In the case of large orders, Qwest proposes that it be permitted to provide an initial response approving or denying a portion of the order no later than 35 days following receipt of the order and continue approval or denial on a rolling basis until it has completed its response to such order. Notably, Qwest specifies no time limit within which it must complete its response to the order.

Mistakenly, AT&T did not pick this provision up as a violation of FCC requirements during the Arizona workshops. However, further discussions on this issue have occurred in other state workshops and the issue went to impasse. As detailed herein, several commissions have issued preliminary rulings on this issue that conclude that this SGAT provision is unlawful.

Under the Act and relevant orders of the FCC, there is no basis for distinguishing large requests from any other request for access to poles, ducts, conduit or ROW. Qwest is required to respond to all requests for access to poles, ducts or ROW within 45 days.

*See, In the Matter of Cavalier Telephone, LLC v. Virginia Electric and Power Company*; 15 FCC Rcd. 9563, June 7, 2000.

Section 47 C.F.R. 1.1403(b) provides in pertinent part:

Requests for access to a utility's poles, ducts, conduits or rights-of-way by a telecommunications carrier or cable operator must be in writing. If

access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45<sup>th</sup> day. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.

The FCC rule contains no exception based on the size of the order. Size doesn't matter. Therefore, Qwest's proposed modification to Section 2.2. of Exhibit D is insufficient to satisfy the FCC rule. Sections 10.8.4 and section 2.2 of Exhibit D must be modified to ensure that Qwest responds to all requests for access within 45 days, irrespective of the size of the request.

In *Cavalier*, the FCC was asked to address the numerous delays Complainant had suffered in obtaining the utility's approval to attach to its poles. In answer to the electric utility's claim that Rule 1.1403 only required it to respond within 45 days if it were going to deny the application, the FCC concluded that under its rules, the responding utility must grant or deny all requests for access to poles within 45 days. The FCC then directed the electric utility to provide immediate access to all poles for which permit applications had been pending for greater than 45 days.

The FCC's interpretation of its rules in *Cavalier* is controlling here. Qwest's SGAT must be modified to require responses to all requests for access to poles, ducts and ROW within 45 days consistent with FCC Rule 1.1403.

The *Cavalier* decision did nothing to change the plain meaning of Rule 1.1403(b).

In that decision, the FCC wrote:

We have interpreted the Commission's Rules, 47 CFR § 1.1403(b), to mean that a pole owner "must deny a request for access within 45 days of receiving such a request or it will otherwise be deemed granted." We conclude that Respondent is required to act on each permit application submitted by Complainant within 45 days of receiving the request. To the extent that a permit application includes a large number of poles,

respondent is required to approve access as the poles are approved, so that complainant is not required to wait until all poles included in a particular permit are approved prior to being granted any access at all. Respondent shall immediately grant access to all poles to which attachment can be made permanently or temporarily, without causing a safety hazard, for which permit applications have been filed with Respondent for longer than 45 days.

Qwest claims that this passage permits it to act on only a subset of a large order within the 45 day period following receipt of the CLEC's application. This assertion rests on a hyper-technical interpretation of the FCC's use of the words "to act on" in the second sentence. Qwest ignores the clear directive in the first sentence of the passage that a pole owner **"must deny a request for access within 45 days of receiving such a request or it will otherwise be deemed granted."** Viewing the passage in its entirety, the conclusion is inescapable: Qwest must respond to all requests for access to poles, ducts, conduit or ROW within 45 days or the request will be deemed to be granted. As such, its SGAT must be amended to conform to this requirement.

Qwest also complains that requiring it to respond to all requests for access, regardless of size, within 45 days is unreasonable and impossible. While Qwest's complaint is more properly lodged with the FCC, since state Commissions are bound to apply FCC rules, AT&T emphasizes that the 45 days at issue here are not a provisioning interval. The only thing Qwest is required to do in 45 days is to respond to a request for access by approving or denying that access. Furthermore, while field verification may be necessary, as Mr. Freeberg has testified, AT&T submits that Qwest's description of the work involved is overblown. Field verification in this context requires only inspection of the relevant facilities. It does not involve any actual construction, as may be the case in other contexts, such as collocation. For this reason, AT&T submits that this assertion

should be given no weight in determining Qwest's obligations under 47 C.F.R.

§1.1403(b). Indeed, Qwest must be required to respond to all requests for access within 45 days.

Moreover, contrary to Qwest's claims, the FCC did not permit the utility to respond to large orders outside the 45-day period. Rather, in this portion of the *Cavalier* decision, the FCC directed the utility to begin informing the CLEC that the utility was approving access to poles as soon as that was determined, so as to provide the Complainant with access as soon as possible. Nowhere did the FCC suggest it would tolerate any exception to the rule that all requests for access must be granted or denied within 45 days.

A review of Exhibit C will reveal that Qwest has proposed alternative language to the table originally found in Section 2.2. The new proposal suffers from the same problems as the original paragraph and continues to seek to place exceptions on the FCC's 45-day requirement. The newly proposed language is equally unlawful and must be rejected.

Because Qwest's SGAT improperly extends the time it has to respond to large orders beyond the 45-day response time permitted by the FCC's Rules, it is not in compliance with Section 251 and 271 of the Act and, therefore, Checklist Item 3 has not been fully satisfied.

In her Revised Initial Ruling on this issue, the Washington Administrative Law Judge ("ALJ") rejected Qwest's SGAT language, stating:

After reviewing Qwest's arguments, we continue to believe that it is appropriate to require a 45 day response time regardless of the size of the request. While it certainly is true that neither Section 251(b)(4) nor Section 271(c)((2)(B)(iii) specify a time limit for granting or denying

access to poles, ducts, and rights-of-way, the FCC's rule and subsequent orders require a 45-day limit. RBOCs must comply with relevant FCC rules and orders to be compliant with Section 271. While the FCC's rule is silent as to whether the response time varies depending upon the size of the request, nothing in the rule suggests that the size of the request should alter the 45-day limit. AT&T, World Com, and the Joint CLECs are correct in recognizing that the rule is explicit on the point that "If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45<sup>th</sup> day."

The *First Report and Order* does suggest that "in evaluating requests for access, a utility may continue to rely on such codes as the NESC [National Electric Safety Code] to prescribe standards with respect to capacity, safety, reliability, and general engineering principles." However, allowing these factors in evaluating a request for access, or placing conditions on access is different than granting or denying the request within a given 45-day period. These standards can form the basis for denying the request, but not for changing the time frame in which the evaluation takes place. The 45-day rule is intended as a "swift and specific enforcement procedure that will allow for competition where access can be provided." Establishing guidelines for evaluation is not the same as having those guidelines drive the timetable for acting on a properly documented application from a CLEC.

In its *Local Competition Reconsideration Order*, the FCC reiterated that "because *time is of the essence in access requests*, a utility must respond to a written request for access within 45 days. If access is not granted within 45 days of the request, the utility must confirm the denial in writing by the 45<sup>th</sup> day." This statement recognizes that the time frame for approving or denying a request is a primary policy consideration and specifies that the appropriate time frame is 45 days. The FCC further held in its *Local Competition Reconsideration Order* that:

Under the procedures adopted in the order, a utility must grant or deny a request for access within 45 days of a written request. If the utility denies the request, it must do so in writing, the reasons given for the denial must relate to the permissible grounds for denying access (e.g., lack of capacity, safety, reliability, or engineering concerns).

Again, this seems to be an affirmation of the 45-day limit. It does not preclude the utility from denying the request on reasonable grounds, but it does affirm that the 45-day time frame is appropriate for making these determinations.

Finally, concerning the *Cavalier Telephone* case, one of the primary issues in that case was, as Qwest notes, a utility company that delayed access to its poles due to safety and other issues. However, the FCC's decision is clear that the number of poles requested does not alter the requirement to grant or deny access to poles, ducts, or rights-of-way within 45 days.<sup>3</sup>

In the Oregon 271 proceeding, the Oregon ALJ followed the Washington ALJ on this issue, ruling:

The resolution of this matter does not turn on a question of Oregon law. Furthermore, the matter suggests a region-wide standard should be applied, since part of the OSS performance measurements conducted by the ROC, will be based on Qwest's compliance with FCC rules with respect to the ordering process. I therefore recommend that the Commission look to the legal analysis already concluded in Washington State. In the Revised Initial Order, paragraphs 57-60, the ALJ summarizes her analysis of the law and concludes that a firm 45 day time limit does indeed exist and the number of poles requested does not alter the requirements of the rule. I recommend that the Commission encourage Qwest to further negotiate with the intervenors regarding the development of SGAT language that will comply with the FCC's rules and meet with the Commission's approval.<sup>4</sup>

**2. Certain Access to ROW Issues Must Be Considered and Resolved Before Qwest Can Be Determined to Be in Compliance with Checklist Item 3.**

In Arizona, AT&T raised concerns that the SGAT did not provide assurances to CLECs that Qwest will provide access to poles, ducts, conduit and rights-of-way "owned or controlled by" Qwest, as is required by the Act. Without such assurances, Qwest would not be legally bound to provide access to the full panoply of poles, ducts, conduits and rights-of-way required by the Act. Qwest framed this issue as an MDU access issue

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<sup>3</sup> *In the Matter of the Investigation into U S WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, Revised Initial Order, Washington Utilities and Transportation Commission, Docket No. UT-003022 and UT-003040, effective August 31, 2000, ¶¶ 56-60. ("Washington Revised Initial Order.")

<sup>4</sup> *In the Matter of the Investigation into the entry of Qwest Corporation, formerly known as U S WEST Communications, Inc., into In-Region InterLATA Services under Section 271 of the Telecommunications Act of 1996*, Workshop 1 Findings and Recommendation Report of the Administrative Law Judge, Public Utilities Commission of Oregon, Docket UM823, issued October 17, 2000, p. 9. ("Oregon Initial Order")

(Tr. 2/17/00, pp. 26-30) and insisted this was a subloop issue that should be deferred to the subloop workshop. *Id.*, p. 77. The other parties agreed, based upon their understanding of Qwest's position at the time.

In the next set of workshops on Checklist Item 3, which occurred in Colorado, Qwest stated that the ROW access issue was not limited to MDUs; rather, it was a broader issue that has to do with all private landowners. Exhibit D, Colorado Transcript dated 6/7/00, pp. 110-11. Consequently, Qwest asserted that this broader issue was not a subloop issue and should be taken up in the ROW workshop. *Id.*, pp. 108-11.

The reason for this assertion by Qwest became more evident as the parties engaged in discussions in the Colorado and Washington workshops on ROW. During the course of those workshops, Qwest disclosed its position that the access it obtains in MDU property is not a right-of-way, subject to the requirements of Section 251(b)(4). While Qwest claimed that it would give CLECs access to whatever rights Qwest had in MDUs, the scope of this promise became unclear and could have been employed by Qwest to ultimately limit the access to which the CLECs are legally entitled. As a result, the CLECs took the position that Qwest must be required to disclose its ROW agreements in order for the CLECs and Commissions to ascertain what rights Qwest has in ROWs, concluding that this was the only way that it could be determined whether Qwest had "ownership or control" over a given ROW. During the course of these discussions, Qwest disclosed that it did not intend to provide access to ROW agreements with private landowners, the very documentation upon which one could ascertain whether Qwest has ownership or control of specific ROW. Exhibit D, Colorado Transcript, pp. 102-03.

Since that time, AT&T and Qwest have engaged in extensive negotiations in subsequent workshops and offline. During the course of these negotiations, Qwest modified its position and now represents that it will permit CLECs to obtain access to any ROW to the full extent Qwest has any access rights to convey. In addition, the parties agreed to additional SGAT revisions and revisions to Exhibit D. These revisions are reflected in Exhibits A, B and C.

Specifically, Qwest agreed to AT&T's suggestion to change the means of conveyance to a document (called an Access Agreement) rather than a Quitclaim, which Qwest states will convey access to not only all existing ROW, but also to any additional ROW acquired after the date of the Access Agreement.

Qwest also agreed with AT&T that it was not necessary for CLECs to obtain landowner consent to the terms of the Access Agreement. In addition, AT&T agreed with Qwest to exclude public ROW from the SGAT. Further, Qwest partially agreed to AT&T's proposal to streamline the process of obtaining landowner consent to disclosure of MDU agreements.

However, as a result of these negotiations, new issues have surfaced that have not been resolved and remain in dispute. A discussion of those issues follows:

a. Ownership and Control Definition.

First, there remains an open dispute regarding the definition of "ownership or control" – the trigger for when Qwest must provide access to ROW pursuant to the Act. Qwest has proposed to define ownership and control in a manner that AT&T contends is inconsistent with relevant FCC orders. Specifically, Qwest proposes:

10.8.1.5 The phrase "ownership or control to do so" means the legal right, as a matter of state law, to (i) convey an interest in

real or personal property or (ii) to provide access to a third party and receive compensation for doing so.

The Act and the FCC orders do not contemplate that Qwest will convey a legal interest in real or personal property to the CLEC under the requirements of Section 251(b)(4) or Section 271(c)(2)(B)(iii). Rather, the Act requires that Qwest afford the CLECs access to its poles, ducts conduits and rights-of-way.

Therefore, according to the Act and the FCC's order, the ownership or control analysis that must be conducted under state law is to determine Qwest's ownership or control to afford the CLEC access to its right-of-way, easement or other interest in property, not, as Qwest suggests, to determine Qwest's legal right "to convey an interest" in property. The ability to afford access may not rise to the level of "conveying an interest."

In addition, Qwest's proposal does not satisfy AT&T's concerns and continues to be too restrictive. First, the emphasis placed on state law (which is achieved by making both subparagraphs (1) and (2) subject to the qualification "as a matter of state law") is only partially adequate. Qwest may have additional obligations or rights under the Act or other federal laws to allow access to ROW. Second, Qwest's proposal does not contemplate that state commissions have developed or may develop their own rules regarding access to ROW through the establishment of rules or the tariff approval process. Finally, Qwest's proposal does not indicate that rights given through express or implied agreements can form the basis of Qwest's ownership or control.

This SGAT provision should be as expansive as the Act permits. Clarity at this stage will eliminate disputes from arising after Qwest's SGAT is implemented. AT&T

has recommended modifying Section 10.8.1.5 as follows to provide the appropriate additional clarity:

The phrase “ownership or control to do so” means (i) the legal right as a matter of state law, to afford access or to use such property, or (ii) the authority to afford access to third parties as may be provided by the landowner to Qwest through express or implied agreements, or (iii) through Applicable Rules.<sup>5</sup>

This proposal is consistent with the FCC Orders.<sup>6</sup> AT&T's proposal not only specifically implicates the rights of Qwest to afford access under tariffs, but also includes any rights established through "Applicable Rules," a defined term which would include the Act and state commission rules. In addition, AT&T's proposal is consistent with law and makes clear that Qwest's ownership or control may arise from several sources.

Qwest has rejected this proposal and this issue is at impasse.

b. Consent Requirement.

Next, while Qwest claims it has agreed to provide CLECs with all copies of its ROW and MDU agreements, Qwest seeks to impose significant conditions that CLECs must comply with before such agreements will be provided to the CLEC. First, Qwest proposes is that it will provide a copy of any ROW agreement in its possession that has not been recorded only after a CLEC has obtained a formally executed, properly notarized “Consent” to the disclosure of the ROW agreement.

Qwest’s extensive new consent requirement is not required by the law and is inconsistent with sound public policy. Further, because such consent requirements are

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<sup>5</sup> The defined term “Applicable Rules” has been used by Qwest in other Sections of the SGAT, namely, Section 9, unbundled Network Elements. In short, such applicable rules would reference all applicable FCC and state commission orders and rules. In addition, AT&T believes the term would also include all local tariffs which may afford Qwest access to landowner premises for the provisioning of local telecommunications service.

<sup>6</sup> See *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets*, First Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 99-217, released October 25, 2000, ¶¶ 85-90.

apparently not required of Qwest itself, or its affiliates, Qwest's consent proposals are discriminatory in violation of both state and federal law.

The law does not mandate the "consent" of the landowner to disclosure and use of Qwest's ROW before Qwest must provide access. The Act mandates that Qwest provide access to that which it owns or controls. Neither the Act nor the FCC's rules and orders impose any requirement for a CLEC to obtain the consent of a landowner for access to rights-of-way.<sup>7</sup> Indeed, the law requires that U S WEST must establish nondiscriminatory processes to expedite access to ROWs: "Procedures for an attachment application should ensure expeditious processing so that "no [BOC] can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications . . . equipment by those seeking to compete in those fields."<sup>8</sup>

The net effect of Qwest's proposed new condition is that Qwest is (1) cloaking its "non-discriminatory" treatment in secrecy, the validity of which can only be tested through discovery of the agreement in litigation; and (2) placing property owners and CLECs in the untenable position of having to face numerous ROW negotiations or numerous eminent domain proceedings from various utilities should Qwest deny access or refuse to expand its existing access.

The consent requirement that Qwest seeks to impose would create unreasonable costs and impose significant delays on CLEC access to ROW and provisioning of service

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<sup>7</sup> 47 U.S.C. § 251(b)(4); *Local Competition Order*, ¶¶ 1119 – 1158.

<sup>8</sup> *Application of BellSouth Corporation pursuant to Section 271 of the Communications Act of 1934, as amended, to provide in-region interLATA services in Louisiana*, CC Docket No. 98-121, FCC 98-271, (released October 13, 1998) ¶ 176 ("*BellSouth Second Louisiana Order*.")

using such ROW, which would constitute a significant barrier to offering the tenants or other customers a competitive alternative.

Qwest's sole basis for this requirement is some purported "expectation" of the landowner that these "dealings are private." Qwest has failed to present any evidence of such an expectation. Indeed, many, if not most, of Qwest's existing ROW agreements (such as Qwest's Agreement for New Multi-Tenant Residential Properties) and easements do not explicitly require consent to the disclosure of the terms of the agreement to third parties, or do not explicitly require written and acknowledged prior consent.<sup>9</sup> Nor do those agreements contain nondisclosure requirements.<sup>10</sup> Absent such a provision, the landowner can have no legal expectation of nondisclosure. That is basic contract law.

Qwest seems to base its proposal on a misunderstanding that state and local law requires it to obtain consent of a landowner for every transfer of an interest in a right of way or similar instrument. That is not the law. In the absence of an express provision against assignments, a contract which does not involve personal skill, trust or confidence is assignable without the consent of the other party. This principle is so well settled that it has become axiomatic.<sup>11</sup>

Essentially, Qwest's proposal creates a presumption that all such ROW agreements are confidential and subject to a prohibition (which is presumably absolute)

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<sup>9</sup> Qwest's Agreement for New Multi-Tenant Residential Properties contains a provision to limit the disclosure of confidential and proprietary information. Such a provision contemplates limiting disclosure of information either party receives under the agreement, not the agreement itself.

<sup>10</sup> If there is an explicit nondisclosure or consent provision between Qwest and the landowner that applies, consent may be required, unless such consent is preempted by the Act. However, any attempt by Qwest to unilaterally impose a consent obligation on CLECs is contrary to the Act.

<sup>11</sup> See 6 C.J.S., Assignments, § 24, p. 1070; 4 Am. Jur., p. 238, § 11.

against disclosure. Such a presumption is inappropriate and imposes a needless burden on CLECs to obtain disclosure.

c. Notice and Opportunity to Cure Requirement.

Qwest has also revised its SGAT to include a new requirement that the CLEC obtain the agreement of a property owner to provide notice and an opportunity to cure supposed “defaults” of a CLEC transfer of any rights of access to a ROW, before Qwest will afford the CLEC access to the ROW agreements. Qwest argues that such landowner agreements are essential to protect it from a panoply of as yet unrealized risks. As explained below, these new requirements have no legal basis, are unnecessary and create extraordinarily time- and resource-intensive burdens on landowners, as well as CLECs who attempt to gain nondiscriminatory access to rights-of-way as provided under the Act.

The law does not mandate that CLECs obtain an agreement from the landowner to provide Qwest with notice and opportunity to cure before Qwest must provide access.<sup>12</sup> The Act mandates that Qwest provide access to that which it owns or controls. Neither the Act nor the FCC’s rules and orders impose any requirement for a CLEC to obtain the agreement of a landowner to provide notice and an opportunity to cure to Qwest or further agreement of a landowner for access to rights-of-way.<sup>13</sup> Indeed, the law requires that Qwest must establish a nondiscriminatory process to expedite access to ROWs: “Procedures for an attachment application should ensure expeditious processing so that “no [BOC] can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications . . .

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<sup>12</sup> If the ROW agreement expressly provides for obtaining the agreement of landowner to provide notice and an opportunity to cure before permitting “assignment” or other transfer, CLECs would obviously be bound, unless such a requirement is determined to be preempted by the Act.

<sup>13</sup> 47 U.S.C. § 251(b)(4); *Local Competition Order*, ¶¶ 1119 – 1158.

equipment by those seeking to compete in those fields.”<sup>14</sup> Moreover, Qwest’s ROW agreements clearly contemplate that Qwest may assign ROW access without restraint.

d. Rulings by Other State Commissions.

In their preliminary rulings on these issues, the administrative law judges in Washington and Oregon have both considered and rejected Qwest’s requirement that CLECs obtain landowner consent before access to ROW and MDU agreements will be afforded. Specifically, the Oregon ALJ stated:

ILECs typically have had many decades of close ties to the communities and, especially, the businesses in the places in which they operate. The ability to obtain favorable access to private property does not rely upon coercive power alone. Active participation by employees in the civic life of the community has not only been encouraged, but many times supported by above-the-line expenditures, generating tremendous amounts of goodwill and providing access to business relationships not otherwise available. Qwest has not shown itself to be any different from other ILECs in this regard. This unique standing in the community does not evaporate with the advent of local exchange competition and it has provided Qwest with both a valuable portfolio of existing agreements and the ability to leverage further advantage for itself. Therefore, I agree with the findings of the Washington ALJ that Qwest’s proposed resolution of this issue fails to satisfy the Act’s requirements.

Although CLEC’s are not entitled to automatically “piggyback” on private ROW and MDU agreements, they must be afforded reasonable access to those documents. Nondiscriminatory access to this information in Qwest’s possession will help to enable a CLEC to negotiate on a reasonably equal footing with Qwest. I recommend that the Commission encourage the parties to continue to negotiate on this issue so that it will not be necessary to dictate the terms which the Commission will require for its recommendation of approval for Qwest’s Section 271 authority.<sup>15</sup>

Similarly, the Washington ALJ concluded:

The Joint Intervenors and Qwest continue to negotiate this issue. While we hope the parties reach a mutually satisfactory agreement, after reviewing the parties’ arguments, we believe that Qwest must provide CLECs access to private right-of-way agreements in a manner that is the least costly and

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<sup>14</sup> *Bell South Second Louisiana Order*, ¶ 176.

<sup>15</sup> *Oregon Initial Order*, p. 8. (Citations omitted.)

burdensome to the CLECs. Qwest denies that it has ownership or control over ROWs established in agreements Qwest negotiated with private parties. Qwest further asserts that whether it has ownership or control is a matter of state law to be determined on a case-by-case basis. Regardless of whether Qwest has ownership or control, the FCC has required RBOCs to provide access to its maps, plats and other relevant data to avoid "the need for costly discovery in pursuing a claim of improper denial of access." *First Report and Order*, ¶1223.

Qwest further argues that access to private ROW agreements should not be an issue in determining its compliance with Section 271(c)(2)(B). Qwest is not correct. One of the evidentiary requirements Qwest must meet to establish its compliance with Checklist Item No. 3 is whether Qwest makes available to CLECs its maps, plats, and other relevant data. This is also an FCC requirement in the *First Report and Order*. *Id.* By failing to make available to CLECs private ROW agreements to which Qwest has access, Qwest creates unnecessary barriers to competition by requiring CLECs to negotiate with private landowners without knowing the terms of Qwest's agreement, and requiring CLECs to engage in potentially costly proceedings with both Qwest and the landowner to obtain eminent domain or right-of-way access.

On August 4, 2000, the parties submitted a schedule for negotiating this issue. We encourage the parties to continue their discussions. While the parties may reach an agreement on this issue, it appears that any agreement must allow for reasonable access to private right-of-way agreements. The issue appears to be access to an agreement to determine whether the CLEC wishes to gain access to an existing ROW. The CLEC cannot make this determination without seeing the document. Qwest's current proposal for providing a quitclaim deed, and requiring CLECs to obtain landowner consent before viewing the document, as well as pay significant fees before viewing the document, places an unreasonable and significant burden on CLECs. Qwest's existing proposal is not acceptable, and does not meet the requirements under Section 271(c)(2)(B) for nondiscriminatory access to ROWs.<sup>16</sup>

The Washington ALJ did not alter this ruling in her Revised Initial Order.<sup>17</sup>

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<sup>16</sup> *In the Matter of the Investigation into US WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, Draft Initial Order, Washington Utilities and Transportation Commission, Docket No. UT-003022 and UT-003040, effective August 31, 2000, ¶¶ 35-38.

<sup>17</sup> *Washington Revised Initial Order*, ¶ 46.

As for the notice and opportunity to cure proposal, the Oregon ALJ concluded:

However, while Qwest does, indeed, run a risk of loss of ROW if a CLEC breaches, there are, in my opinion, alternative means available that will not impede CLECs' abilities to negotiate ROW agreements: For example, Qwest may amend its own agreement with the landowner or offer the landowner a separate guarantee agreement. Unlike the CLECs, in the event that Qwest ultimately provides copies of its ROW and MDU agreements to CLECs, Qwest will be aware of all competitors' uses of Qwest's ROWs and will be able to act independently and expeditiously to protect its interests. I find that the proposed SGAT Exhibit D, Attachment 4, Consent Agreement Form, Paragraph 4, Notice and Cure Period, language is burdensome and discriminatory, and therefore recommend that the Commission encourage the parties to continue to negotiate on this issue so that it will not be necessary to dictate the terms which the Commission will require for its recommendation of approval for Qwest's Section 271 authority.<sup>18</sup>

For these same reasons, this Commission should reject Qwest's proposed consent and notice and opportunity to cure requirements and direct Qwest to provide CLECs with full and unconditional access to its ROW and MDU agreements.

**3. Checklist Item 3 Should Not Be Closed Until ROW Issues From Other Checklist Items Are Resolved.**

Several other checklist items raise ROW concerns that must be fully addressed before Checklist Item 3 is closed. As an example, in Arizona, Qwest asserted, and other parties agreed, that the MDU access issue be addressed in the workshop on subloops. While some discussions on MDUs have occurred in other workshops, the MDU and subloop issues are integrally related. CLECs should not be foreclosed from addressing MDU access issues in the subloop workshop.

Similarly, in the recent Arizona Emerging Services workshop, Qwest stated that it

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<sup>18</sup> *Oregon Initial Order*, p. 7.

intended to offer a new product called “field collocation.” While Qwest presented no SGAT language or testimony describing this new offer, it appears that field collocation will raise ROW issues. As a result, ROW compliance issues will likely arise in Workshop 2 when this filed collocation offering is presented.

Accordingly, because other checklist items raise right-of-way concerns, Checklist Item 3 should not be unconditionally closed until such concerns are fully addressed in these related workshops. AT&T is not suggesting that the Commission withhold decision until these other workshops are complete. Rather, parties should not be foreclosed from addressing ROW issues that arise in other workshops and from making arguments, if appropriate, that Qwest’s position on such issues results in Qwest being in noncompliance with Checklist Item 3. As a result, although AT&T does not believe Qwest to be currently in compliance with Checklist Item 3, if the Commission concludes otherwise, any conclusion on compliance should be conditional, and should allow parties, if necessary, to raise ROW affecting issues that surface in other workshops.

## **II. CHECKLIST ITEM 7.**

AT&T has several amendments and revisions that should be made to the Staff Report on Checklist Item 7 in order for the report to fully reflect the record and the agreements of the parties.

First, Paragraph 96 should be amended to reflect that the parties agreed to defer an issue raised by AT&T regarding 911 problems arising from Qwest’s provisioning of LNP to Checklist Item 11. Tr. 1/11/2000, pp. 95-96.

Second, in addition to the SGAT revisions referenced in paragraph 98, AT&T raised several other issues that resulted in Qwest revising its SGAT. Specifically, AT&T

had concerns that the U S WEST SGAT did not provide nondiscriminatory access to the complete U S WEST Directory Assistance List, which is the list of all in-region telephone numbers it uses to provide directory assistance. U S WEST proposed revisions to Section 10.6.1.1 of its SGAT, which addressed this concern. Qwest made a number of other changes to paragraphs of its SGAT to reflect AT&T's concerns regarding access to the directory assistance list. Specifically, Qwest amended Sections 10.6.2.3, 10.6.2.6, and 10.6.2.9. These revisions were set forth in U S WEST's SGAT Second Revision, dated April 7, 2000, which was attached to U S WEST's Statement of Position Re: Checklist Item Numbers 3, 7, 10 and 13. (An excerpt of Section 10.6 is attached hereto as Exhibit E.)

Third, AT&T expressed concern that the SGAT did not afford CLECs the same ability as U S WEST to contact end users with non-published telephone numbers in emergency situations. If the U S WEST directory assistance personnel have access to these numbers for emergency situations, the CLECs should have them as well. CLECs are prohibited from publishing this list, so there should be no concern with publishing a number that should not be published. U S WEST amended Section 10.6.2.10 of the SGAT to address this concern.

Next, AT&T supports the comments filed by WorldCom relating to incorporating the additional SGAT language that has been negotiated and agreed to by the parties on the licensing issue into the Arizona SGAT.

Finally, Paragraph 100 should be amended to reflect that Qwest revised Section 9.23.3.9.1 to reflect the AT&T concern addressed in this paragraph.

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### **III. CHECKLIST ITEM 10.**

For the most part, the Staff has properly characterized the record and resolution of issues on Checklist Item No. 10. However, the Staff Report does not reflect the full resolution of one of the issues raised by AT&T on this checklist item. Specifically, subsequent negotiations on Section 9.13.1.1 of the SGAT took place in Colorado, and the parties agreed to revisions to this section that resolve the concern AT&T raised in Arizona that Qwest's SGAT appeared to intermingle access to signaling for interconnection and signaling as an unbundled element. The parties agreed to the revised language for Section 9.13.1.1, which appears to have been incorporated into the 3<sup>rd</sup> Revision to the Arizona SGAT as reflected in Exhibit F. This resolution should be reflected in Staff Report on this Checklist Item.

In addition, in subsequent workshops on Checklist Item 10 in other states, additional revisions were agreed to by Qwest for Section 9.13, 9.14, 9.15, 9.16, and 9.17. These revisions are reflected in Exhibit F, a comparison of the Arizona SGAT 3<sup>rd</sup> Revision submitted by Qwest to the Arizona Commission in July 2000, with Qwest's most recent complete SGAT filing made in Colorado on January 15, 2001. The sections referenced above are all relevant to Checklist Item 10. The revisions identified in Exhibit F should be incorporated into the Arizona SGAT before Qwest is determined to be in compliance with Checklist Item 10.

### **CONCLUSION**

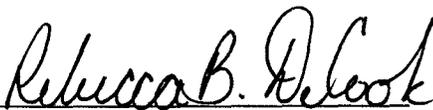
Based upon the discussions that have occurred in other states on these checklist items, the Arizona record is stale and should be supplemented to reflect SGAT revisions that have been agreed to in other states. An additional one-day workshop should be

scheduled to bring the Arizona record up to date on the status of these checklist items, including other language revisions that have been proposed and disputed, and to discuss other disputed issues that have arisen because of these ongoing discussions.

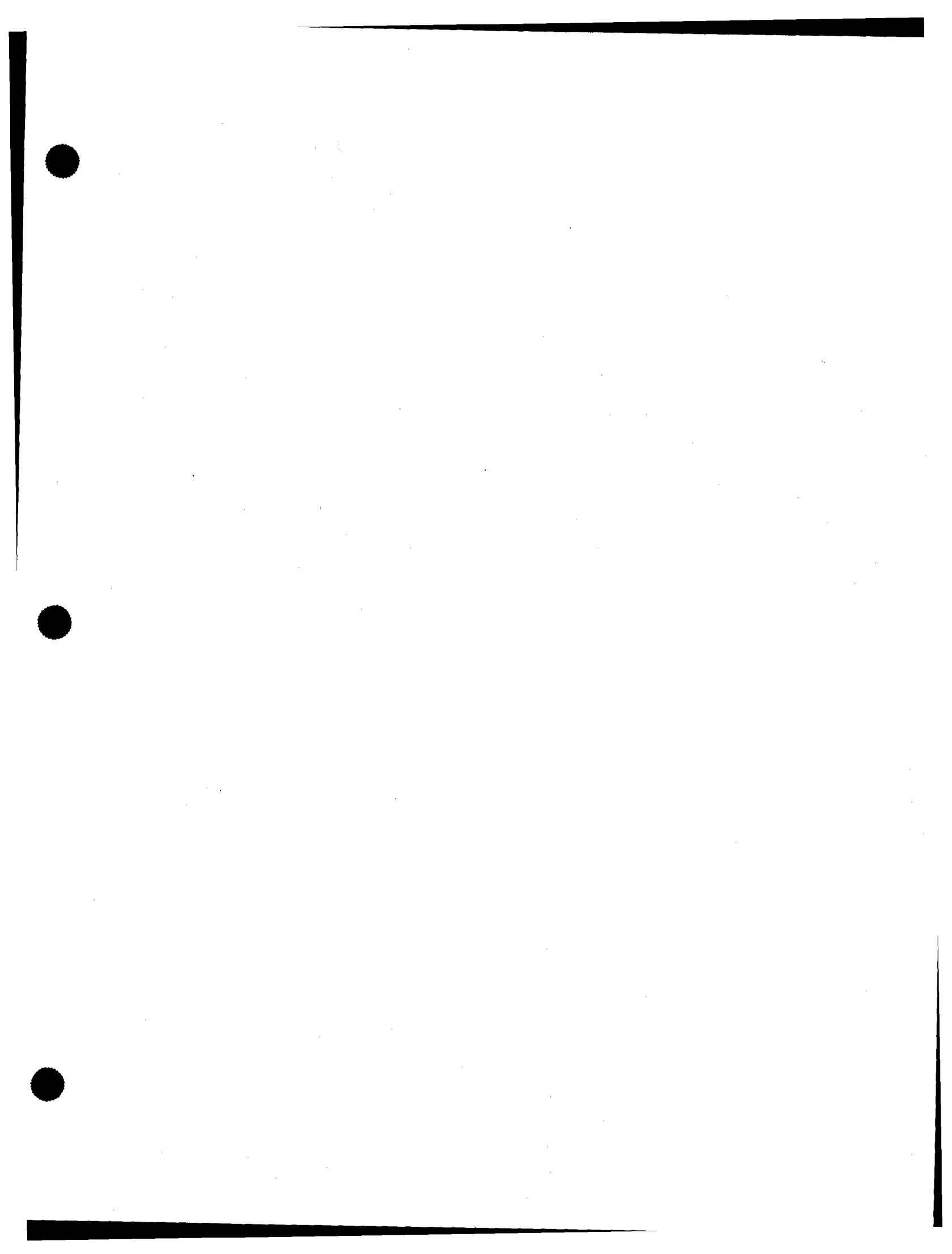
In addition, until such time as Qwest brings its SGAT into conformance with the revisions it agreed to make on these checklist items in other state 271 workshops and into conformance with its legal obligation to provide nondiscriminatory access to ROW, Qwest cannot satisfy Checklist Items 3, 7, and 10.

RESPECTFULLY submitted this 19th day of January, 2001.

AT&T COMMUNICATIONS OF THE  
MOUNTAIN STATES, INC. AND AT&T  
LOCAL SERVICES

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**STATEMENT OF GENERALLY AVAILABLE  
TERMS AND CONDITIONS FOR INTERCONNECTION,  
UNBUNDLED NETWORK ELEMENTS, ANCILLARY SERVICES,  
AND RESALE OF TELECOMMUNICATIONS SERVICES PROVIDED BY  
QWEST CORPORATION  
IN THE STATE OF  
OREGON**

**APRIL 24, 2000**

**With Proposed Edits from:**

**Colorado Workshop June 6 - 8, 2000**

**Washington Workshop June 21 - 23, 2000**

**Colorado Workshop June 29 - 30, 2000**

**Washington Workshop July 6, 2000**

**Colorado Workshop August 1 - 3, 2000**

**Oregon Workshop August 9 - 11, 2000**

**Arizona Workshop August 16 - 18, 2000**

**Arizona Workshop September 6 - 8, 2000**

**Colorado Workshop September 19 - 22, 2000**

**6 State Workshop October 3 - 9, 2000**

## 10.8 Access to Poles, Ducts, Conduits, and Rights of Way

### 10.8.1 Description

10.8.1.1 Pole Attachments – ~~Each Party~~Where it has ownership or control to do so, Qwest will provide the ~~other~~CLEC with access to available pole attachment space for the placing of facilities for the purpose of transmitting Telecommunications Services.

10.8.1.1.1 The term Pole Attachment means any attachment by CLEC to a pole owned or controlled by Qwest.

~~10.8.1.2 Ducts and Conduits – Each Party~~Where it has ownership or control to do so, Qwest will provide the ~~other~~CLEC with access to available ~~underground~~ ducts/conduits for the purpose of placing facilities for transmitting Telecommunications Services. A spare conduit will be leased for copper facilities only, and an innerduct for the purpose of placing fiber. CLEC may place innerduct in an empty conduit. Control of CLEC-installed spare innerduct shall vest in Qwest immediately upon installation; ownership of such innerduct shall vest to Qwest if and when CLEC abandons such innerduct. Within a multi-unit building, duct may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser.

~~10.8.1.2.1 The term Duct means a single enclosed raceway for conductors, cable and/or wire. Duct may follow streets, bridges, public or private ROW or may be within some portion of a multi-unit building. Within a multi-unit building, duct may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser.~~

~~10.8.1.2.2 The term Conduit means a pipe placed in the ground in which cables and/or wires may be installed.~~

10.8.1.3 Rights of Way (ROW) – Where it has ownership or control to do so, ~~each Party~~Qwest will provide to the ~~other~~CLEC, via an Access Agreement in the form of Attachment 4 to Exhibit D, access to available ROW for the purpose of placing facilities for transmitting Telecommunication Services ~~telecommunications facilities~~. ROW includes land or other property owned or controlled by Qwest and may run under, on, above, across, along or through public or private property or enter multi-unit buildings.

~~10.8.1.4 Reciprocity – The rights, benefits and obligations in this Section 10.8 are reciprocal. This Section 10.8 expressly specifies rights, benefits, and duties in the context of CLEC obtaining access to Qwest's poles, ducts, conduit and ROW. However, in the context of Qwest obtaining access to CLEC's poles, ducts, conduit, and ROW, CLEC shall have the duties, benefits, and rights expressly ascribed to Qwest herein, and Qwest shall have the duties, benefits, and rights expressly ascribed to CLEC herein.~~10.8.1.3.1 ROW means a real property interest in

privately-owned real property, but expressly excluding any public, governmental, federal or Native American, or other quasi-public or non-private lands, sufficient to permit Qwest to place telecommunications facilities on such real property; such property owner may permit Qwest to install and maintain facilities under, on, above, across, along or through private property or enter multi-unit buildings.

10.8.1.4 CLEC Duties – Pursuant to 47 U.S.C. §251(B)(4) and Oregon rules, CLEC each party shall have the duty to afford access to the its poles, ducts, conduits and rights-of-way of telecommunications services CLEC to Qwest the other party on rates, terms, and conditions that are consistent with Section 224 and further, CLEC shall provide reasonable access to poles, ducts and conduits, and right of way when feasible and when access is necessary for Qwest to provide service.

10.8.1.5 The phrase “ownership or control to do so” means the legal right, as a matter of state law, to convey an interest in real or personal property.

## **10.8.2 Terms and Conditions**

Qwest shall provide CLEC non-discriminatory access to poles, ducts, conduit and rights of way on terms and conditions found in the Revised Qwest Right of Way, Pole and Attachment and/or Innerduct Occupancy General Terms and Conditions Information Document, attached hereto as Exhibit D. Qwest will not favor itself over CLEC when provisioning access to poles, ducts, conduits and rights of way. Qwest shall not give itself preference when assigning space.

10.8.2.1 Subject to the provisions of this Agreement, Qwest agrees to issue to CLEC authorization for CLEC to attach, operate, maintain, rearrange, transfer and remove at its sole expense its facilities on Poles/Innerduct or ROW owned or controlled in whole or in part by Qwest, subject to Orders placed by CLEC. Any and all rights granted to CLEC shall be subject to and subordinate to any future local, state and/or federal requirements.

10.8.2.2 Qwest will rely on such codes as the National Electrical Safety Code (NEC) to prescribe standards with respect to capacity, safety, reliability, and general engineering principles.

10.8.2.3 Federal requirements, such as those imposed by Federal Energy Regulatory Commission (FERC) and Occupational Safety and Health Administration (OSHA), will continue to apply to the extent such requirements affect requests for attachments or occupancy to Qwest facilities under Section 224(f)(1) of the Act.

10.8.2.4 CLEC shall provide access to a map of the requested Poles/Innerduct/ROW route, including estimated distances between major points, the identification and location of the Poles/Innerduct and ROW and a description of CLEC's facilities. Qwest agrees to provide to CLEC access to relevant plats, maps, engineering records and other data within ten (10) business days of receiving a bona fide request for such information, except when in the case of

extensive requests. Extensive requests involve the gathering of plats from multiple locations more than one (1) location, span more than five (5) Wire Centers, or consist of ten (10) or more intra-Wire Center requests submitted simultaneously. Responses to extensive requests will be provided within a reasonable interval, not to exceed sixty (60) calendar days.

10.8.2.5 Except as expressly provided herein, or in the Pole Attachment Act of 1934 as amended and its regulations and rules, or in any applicable state or municipal laws, nothing herein shall be construed to compel Qwest to construct, install, modify or place any Poles/Innerduct or other facility for use by CLEC.

10.8.2.6 Qwest retains the right to determine the availability of space on Poles/Innerduct, conduit and ROW consistent with 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event Qwest determines that rearrangement of the existing facilities on Poles/Innerduct, conduit and ROW is required before CLEC's facilities can be accommodated, the actual cost of such modification will be included in CLEC's nonrecurring charges for the associated Order ("Make-Ready fee"). When modifications to a Qwest spare conduit include the placement of Innerduct, Qwest or CLEC will install the number of Innerduct required to fill the duct to its full capacity.

10.8.2.7 Qwest shall make manhole ingress and egress for Innerduct access available to CLEC. Qwest will perform a feasibility study to determine whether to provide a stub out via the pre-constructed knock out within the manhole, or to perform a core drill of the manhole.

10.8.2.8 Where such authority does not already exist, CLEC shall be responsible for obtaining the necessary legal authority to occupy ROW, and/or Poles/Innerduct on governmental, federal, Native American, and private rights of way. CLEC shall obtain any permits, licenses, bonds, or other necessary legal authority and permission, at CLEC's sole expense, in order to perform its obligations under this Agreement. CLEC shall contact all owners of public and private rights-of-way to obtain the permission required to perform the work prior to entering the property or starting any work thereon. See Section 10.8.4. CLEC shall comply with all conditions of rights-of-way and permits. Once such permission is obtained, all such work may be performed by Qwest or CLEC at the option of CLEC.

10.8.2.9 Access to a Qwest Central Office manhole will be permitted where technically feasible. If space is available, Qwest will allow access through the Central Office manhole to the POI (Point of Interconnection). There shall be a presumption that there shall be no fiber splices allowed in the Central Office manhole. However, where CLEC can establish the necessity and technical feasibility of splicing in the Central Office Manhole, such action shall be permitted.

10.8.2.10 If CLEC requests Qwest to replace or modify existing Poles/Innerduct to increase its strength or capacity for the sole benefit of CLEC, CLEC shall pay Qwest the total actual replacement cost, Qwest's actual cost to transfer its attachments to new Poles/Innerduct, as necessary, and the actual

cost for removal (including actual cost of destruction) of the replaced Poles/Innerduct, if necessary. Ownership of new Poles/Innerduct shall vest to Qwest. Upon request, Qwest shall permit CLEC to install Poles/Innerduct. Qwest reserves the right to reject any non-conforming replacement Pole/Conduit installed by CLEC that do not conform to the NESC, OSHA or local ordinances. To the extent that a modification is incurred for the benefit of multiple parties, CLEC shall pay a proportionate share of the total actual cost based on the ratio of the amount of new space occupied by the facilities of CLEC to the total amount of space occupied by all parties including Qwest or its affiliates participating in the modification. Parties who do not initiate, request or receive additional space from a modification, are not required to share in the cost of the modification. CLEC, Qwest or any other party that uses a modification as an opportunity to bring its facilities into compliance with applicable safety or other requirements will be deemed to be sharing in the modification and will be responsible for its share of the modification cost. Attaching entities will not be responsible for sharing in the cost of governmentally mandated pole or other facility modification. Qwest does not and will not favor itself over other carriers when provisioning access to poles, innerduct and rights-of-way.

10.8.2.11 Notification of modifications initiated by or on behalf of Qwest and at Qwest's expense shall be provided to CLEC at least sixty (60) calendar days prior to beginning modifications. Such notification shall include a brief description of the nature and scope of the modification. If CLEC does not respond to a requested rearrangement of its facilities within sixty (60) days after receipt of written notice from Qwest requesting rearrangement, Qwest may perform or have performed such rearrangement and CLEC shall pay the actual cost thereof. No such notice shall be required in emergency situations or for routine maintenance of Poles/Innerduct completed at Qwest's expense.

10.8.2.12 Qwest reserves the right to make an on-site/final construction inspection of CLEC's facilities occupying the Poles/Innerduct system. CLEC shall reimburse Qwest for the actual cost of such inspections except where specified in this Section.

10.8.2.13 When final construction inspection by Qwest has been completed, CLEC shall correct such non-complying conditions within the reasonable period of time specified by Qwest in its written notice. If corrections are not completed within the specified reasonable period, occupancy authorizations for the ROW, Poles/Innerduct system where non-complying conditions remain uncorrected shall suspend forthwith, regardless of whether CLEC has energized the facilities occupying said Poles/Innerduct or ROW system and CLEC shall remove its facilities from said Poles/Innerduct or ROW in accordance with the provisions of this Section, provided, however, if the corrections physically cannot be made within such specified time, and CLEC has been diligently prosecuting such cure, CLEC shall be granted a reasonable additional time to complete such cure. Qwest may deny further occupancy authorization to CLEC until such non-complying conditions are corrected or until CLEC's facilities are removed from the Poles/Innerduct system where such non-complying conditions exist. If agreed between both Parties, Qwest shall perform or have performed such corrections and CLEC shall pay Qwest the actual cost of performing such work.

Subsequent inspections to determine if appropriate corrective actions have been taken may be made by Qwest.

10.8.2.14 Once CLEC's facilities begin occupying the Poles/Innerduct or ROW system, Qwest may perform a reasonable number of inspections. Qwest shall bear the cost of such inspections unless the results of the inspection reveal any violation or hazard, or that CLEC has in any other way failed to comply with the provisions of this Agreement; Section 10.8.2.20; in which case CLEC shall reimburse Qwest the costs of inspections and re-inspections, as required. CLEC's representative may accompany Qwest on such field inspections. The cost of periodic inspection or any special inspections found necessary due to the existence of sub-standard or unauthorized occupancies shall be billed separately.

10.8.2.15 The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to CLEC upon completion of the inspections.

10.8.2.16 Final construction, subsequent, and periodic inspections or the failure to make such inspections, shall not ~~impose any liability of any kind upon Qwest nor~~ relieve CLEC of any responsibilities, obligations, or liability assigned under this Agreement.

10.8.2.17 CLEC may use individual workers of its choice to perform any work necessary for the attaching of its facilities so long as such workers have the same qualifications and training as Qwest's workers. CLEC may use any contractor approved by Qwest to perform Make-Ready Work.

10.8.2.18 If Qwest terminates an ~~order~~Order for cause, or if CLEC terminates an ~~order~~Order without cause, subject to 10.8.4.5, CLEC shall pay termination charges equal to the amount of fees and charges remaining on the terminated ~~order(s)~~Order(s) and shall remove its facilities from the Poles/Innerduct within sixty (60) calendar days, or cause Qwest to remove its facilities from the Poles/Innerduct at CLEC's expense; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to Qwest until CLEC's facilities are physically removed. "Cause" as used herein shall include ~~but not be limited to~~ CLEC's use of its facilities in material violation of any applicable law or in aid of any unlawful act or making an unauthorized modification to Qwest's Poles/Innerduct.

Poles/Innerduct, or, in the case of ROW, any act or omission that violates the terms and conditions of either (a) the Access Agreement by which Qwest conveys a right of access to the ROW to CLEC, or (b) the instrument granting the original ROW to Qwest or its predecessor.

10.8.2.19 Qwest may abandon or sell any Poles/Innerduct, conduit or ROW at any time by giving written notice to CLEC. Any Poles, Innerduct, conduit or ROW that is sold, will be sold subject to all existing legal rights of CLEC. Upon abandonment of Poles/Innerduct, conduit or ROW, and with the concurrence of the other joint user(s), if necessary, CLEC shall, within sixty (60) calendar days of such notice, either: 1) continue to occupy the Poles/Innerduct, conduit or ROW pursuant to its existing rights under this Agreement if the Poles/Innerduct,

conduit, or ROW is purchased by another party; 2) purchase the Poles/Innerduct, conduit or ROW from Qwest at the current market value; or 3) remove its facilities therefrom. Failure to explicitly elect one of the foregoing options within sixty (60) calendar days shall be deemed an election to purchase the Poles/Innerduct, conduit or ROW at the current market value if no other party purchased the Poles/Innerduct, conduit or ROW within this sixty (60) day period.

10.8.2.20 CLEC's facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated by reference, and any governing authority having jurisdiction. Where a difference in specifications exists, the more stringent shall apply. Notwithstanding the foregoing, CLEC shall only be held to such standard as Qwest its Affiliates or any other Telecommunications Carrier is held. Failure to maintain facilities in accordance with the above requirements or failure to correct as provided in Section 10.8.2.13 shall be cause for termination of the Order. Qwest's procedures governing its standard maintenance practices shall be made available upon request for public inspection at the appropriate Qwest premises. CLEC's standard maintenance practices for facilities shall be made available to Qwest upon request. CLEC shall in a timely manner comply with all requests from Qwest to bring its facilities into compliance with these terms and conditions.

10.8.2.21 Should Qwest under the provisions of this Agreement remove CLEC's facilities from the Poles/Innerduct covered by any Order, Qwest will deliver the facilities removed upon payment by CLEC of the cost of removal, storage and delivery, and all other amounts due Qwest. If CLEC removes facilities from Poles/Innerduct for other than repair or maintenance purposes, no replacement on the Poles/Innerduct shall be made until all outstanding charges due Qwest for previous occupancy have been paid in full. CLEC shall advise Qwest in writing as to the date on which the removal of facilities from the Poles/Innerduct has been completed.

10.8.2.22 If any facilities are found attached to Poles/Innerduct for which no order is in effect, Qwest, without prejudice to its other rights or remedies under this Agreement, may assess a charge and CLEC agrees to pay a charge of \$200.00 per Pole or \$200 per innerduct run between two manholes, plus payment as specified in this Section. Qwest shall waive the unauthorized attachment fee if the following conditions are both met: (1) CLEC cures such unauthorized attachment (by removing it or submitting a valid Order for the attachment in the form of Attachment 2 of Exhibit D, within thirty (30) days of written notification from Qwest of the unauthorized attachment; and (2) the unauthorized attachment did not require Qwest to take curative measures itself (e.g., pulling additional innerduct) prior to cure by CLEC. Qwest shall also waive the unauthorized attachment fee if the unauthorized attachment arose due to error by Qwest rather than CLEC. CLEC is required to submit in writing, within ten (10) business days after receipt of written notification from Qwest of the unauthorized occupancy, a Poles/Innerduct application. If such application is not received by Qwest within the specified time period, CLEC will be required to remove its unauthorized facility within thirty (30) calendar days of the final date

for submitting the required application, or Qwest may remove CLEC's facilities without liability, and the cost of such removal shall be borne by CLEC.

10.8.2.23 No act or failure to act by Qwest with regard to an unauthorized occupancy shall be deemed as the authorization of the occupancy. Any subsequently issued authorization shall not operate retroactively or constitute a waiver by Qwest of any of its rights or privileges under this Agreement or otherwise. CLEC shall be subject to all liabilities of the Agreement in regard to said unauthorized occupancy from its inception.

10.8.2.24 Qwest will provide CLEC non-discriminatory access to poles, ducts, conduits and ROW pursuant to 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event of a conflict between this SGAT, on one hand, and 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern. Further, in the event of a conflict between Attachment Exhibit D, on one hand, and this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern, provided however, that any Access Agreement that has been duly executed, acknowledged and recorded in the real property records for the county in which the ROW is located shall govern in any event pursuant to its terms.

10.8.2.25 Nothing in this SGAT shall require Qwest to exercise eminent domain on behalf of CLEC.

10.8.2.26 Upon CLEC request, Qwest will certify to a landowner with whom Qwest has an ROW agreement, the following:

10.8.2.26.1 that the ROW agreement with Qwest does not preclude the landowner from entering into a separate ROW agreement with CLEC; and

10.8.2.26.2 that there will be no penalty under the agreement between the landowner and Qwest if the landowner enters into a ROW agreement with CLEC.

### **10.8.3 Rate Elements**

Qwest fees for attachments are in accordance with Section 224 of the Act and FCC orders, rules and regulations promulgated thereunder, as well as the rates established by the Commission including the following rates, are reflected in Exhibit A.

10.8.3.1 Inquiry Fee. A non-refundable pre-paid charge used to recover the costs associated with performing an internal record review to determine if a requested route and/or facility is available, or with respect to ROW, to determine the information necessary to create the ROW Matrix, which identifies, for each ROW, the name of the original grantor and the nature of the ROW (i.e., publicly recorded and non-recorded) and the MDU Matrix, which identifies each requested legal agreement between Qwest and a third party who has a multi-unit

building in Qwest's possession that relates to Telecommunications Services available for lease provided to or through real property owned by the third party (MDU Agreement) and, for each such MDU Agreement, the name of the third party. Separate Inquiry Fees apply for poles and for innerduct. ROW, Poles and Conduit/Innerduct.

10.8.3.2 Field Verification Fee/Access Agreement Preparation Fee. In the case of Poles and Innerduct, the Field Verification Fee is a non-refundable pre-paid charge which recovers the estimated actual costs for a field survey verification required for a route and to determine scope of any required Make-Ready work. The estimated pre-paid fee shall be billed in advance. Separate Field Verification Fees apply for poles and for manholes. Poles and Manholes. In the case of ROW, the Access Agreement Preparation Fee is a non-refundable, pre-paid charge which recovers the estimated actual costs for preparation of the Access Agreement for each ROW requested by the CLEC. Field Verification and Access Agreement Preparation Fees shall be billed in advance.

10.8.3.3 Make-Ready Work Fee. A pre-paid non-refundable (other than true-up) charge which recovers the cost of necessary work required to make the requested facility/ROW available for lease. For innerduct leases, access. For innerduct, this could include, but is not limited to, the placing of innerduct in conduit/duct systems or core drilling of manholes. For pole attachment requests, this could include, but is not limited to, the replacement of poles to meet required clearances over roads or land. For ROW, this Make-Ready could include, but is not limited to, personnel time, including attorney time. With respect to ROW, Make-Ready work refers to legal or other investigation or analysis arising out of CLEC's failure to comply with the process described in Exhibit D for ROW, or other circumstances giving rise to such work beyond the simple preparation of one or more Access Agreements. The estimated pre-paid fee shall be billed in advance.

10.8.3.4 Pole Attachment Fee. A pre-paid fee which is charged for the occupancy, including during any Make-Ready period, of one foot of pole space (except for antenna attachment which requires two feet). This fee shall be annual unless CLEC requests that it be semi-annual.

10.8.3.5 Innerduct Occupancy Fee. A pre-paid fee which is charged for the occupancy, including during any Make-Ready period, of an innerduct on a per foot basis. This fee shall be annual unless CLEC requests that it be semi-annual.

10.8.3.6 Access Agreement Consideration. A pre-paid fee which constitutes consideration for conveying access to the ROW to CLEC. This fee shall be a one-time (i.e. non-recurring) fee.

## 10.8.4 Ordering

~~The Ordering Process has distinct steps for~~ There are two (2) steps required before placing an Order for access to ROW, Innerduct and Pole Attachment: Inquiry Review and Field Verification.

~~10.8.4.1 Inquiry. Upon request for~~ Inquiry Reviews. Upon receipt of an inquiry regarding ROW access, Pole Attachment or Innerduct Occupancy, Qwest will provide CLEC with a document of General Information for Pole Attachment and Innerduct Occupancy along with a description of the application process. The Exhibit D. CLEC will review the documents and provide Qwest with maps of the desired area indicating the routes and entrance points for proposed attachment, attachment or occupancy. The proposed occupancy or proposed CLEC construction on Qwest owned or controlled Poles, Innerduct and ROW as well as the street addresses of any multi-unit buildings upon or through which CLEC proposes construction on ROW owned or controlled by Qwest. CLEC will include the appropriate Inquiry Fee with its inquiry.

~~a~~

~~10.8.4.2 Inquiry Reviews~~ completed Attachment 1.A from Exhibit D.

~~a) Inquiry Review - Innerduct.~~ 10.8.4.1.1 Inquiry Review - Duct/Conduit. Qwest will complete the database inquiry and prepare a duct structure diagram (referred to as a "Flatline") which shows distances and access points (such as manholes). Along with the Flatline will be estimated costs for field verification of available facilities. These materials will be provided to the CLEC within ten (10) calendar days or within the time frames of the applicable federal or state law, rule or regulation. This time frame is applicable to the standard inquiry of thirty (30) Utility Holes or fewer. An inquiry which exceeds the standard will have negotiated completion dates.

~~b) Inquiry Review - Poles.~~ Qwest will provide the name and contact number for the appropriate local field engineer for joint validation of the poles and route within ten (10) calendar days of the request. ~~The Qwest field engineer will be informed of CLEC's needs and will report back on the number of poles, pole condition and Make-Ready work, if desired. A statement of the Make-Ready costs, number of poles and lease rates will be provided to CLEC within thirty-five (35) calendar days of the completion of the joint survey when 100 or fewer poles are involved. The Pole quotation shall be valid for ninety (90) calendar days. Qwest will charge CLEC for field engineer time.~~

~~10.8.4.3 Request - Innerduct.~~ CLEC will review the Inquiry results and determine whether to proceed with verification. If desired, CLEC will sign and return Attachment 1 of the General Information document along with a check for the estimated verification costs. Upon payment of the estimated verification costs, Qwest will provide the requested information which may or may not include the following as appropriate: a review of public and internal right-of-way

~~records for restrictions and to identify to CLEC what additional right-of-way permission is required; a field survey and site investigation of the Innerduct, including the preparation of distances and drawings, to determine availability of existing Innerduct; identification of Make-ready costs required to provide Innerduct; the schedule in which the Make-ready work will be completed; and, the annual recurring prices associated with the attachment of facilities. Such estimates shall be provided on Attachment 2 of the General Information document and shall be completed within thirty-five(35) calendar days for a standard inquiry of Thirty (30) Utility Hole sections or less, or as negotiated between Qwest and CLEC identified in the Cost Quotation.~~

~~10.8.4.4 Order – Poles and Innerduct. Upon completion of the procedures described above, Qwest shall provide CLEC a statement of Make-Ready costs and yearly (unless CLEC requests semi-annual) lease rates. The review, signing and return of Attachment 2 of the General Information Document along with payment of the Make-Ready and prorated lease charges for the current relevant period (annual or semi-annual) shall be accepted as an Order for the attachment or occupancy. Upon receipt of the accepted Order from CLEC and applicable payment for the Make-Ready fees identified, Qwest will assign CLEC's requested space and complete the Make-Ready work which may be required. Qwest will notify CLEC when Poles/Innerduct are ready for attachment of facilities.~~

~~10.8.4.5 Estimates of Make-Ready in the Order are used to cover actual Make-Ready costs. However, if Qwest requests, CLEC will be responsible for payment of the actual Make-Ready costs determined if such costs exceed the estimate. Such payment shall be made within thirty (30) days of receipt of invoice. Within fifteen (15) business days of a request therefor, Qwest will provide CLEC copies of records reflecting actual cost of Make-Ready work; provided, however, that, if Qwest does not possess all such records at the time of the request, then Qwest will provide copies of such records within fifteen (15) business days of receipt of such records. CLEC must request such records, if at all, within thirty (30) calendar days of the completion of Make-Ready work. If the actual Make-Ready costs are less than the estimate, an appropriate credit for the difference will be issued upon request therefore. Such request must be received within sixty (60) calendar days following CLEC's receipt of copies of records if CLEC has requested records under this paragraph, or within thirty (30) calendar days of the completion of Make-Ready work if CLEC has not requested records under this paragraph. Such credit will issue within ten (10) business days of Qwest's receipt of either all records related to such actual costs or CLEC's request for credit, whichever comes last. If Qwest denies the Poles/Innerduct, ROW request, Qwest shall do so in writing, within forty-five (45) days following the request, specifying the reasons for denial along with all relevant evidence and supporting information and will also refund the difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any, upon request. Such request must be made within thirty (30) calendar days of CLEC's receipt of written denial. Any such refund shall be made within ten (10) business days of either receipt of CLEC's request or Qwest's receipt of all records relating to the actual costs, whichever comes last.~~

10.8.4.1.2 Inquiry Review – Poles. Qwest will provide the name and contact number for the appropriate local field engineer for joint validation of the poles and route and estimated costs for field verification on Attachment 1.B of Exhibit D within ten (10) calendar days of the request. This time frame is applicable to the standard inquiry of one hundred (100) poles or fewer. An inquiry which exceeds the standard will have negotiated completion dates.

10.8.4.1.3 Inquiry Review – ROW. Qwest shall, upon request of CLEC, provide the ROW Matrix, the MDU Matrix and a copy of all publicly recorded agreements listed in those Matrices to CLEC within ten (10) days of the request. Qwest will provide to CLEC a copy of agreements listed in the Matrices that have not been publicly recorded if and only if CLEC obtains authorization for such disclosure from the third party owner(s) of the real property at issue by an executed version of either the Consent to Disclosure form or the Consent Regarding Access Agreement form, both of which are included in Exhibit D, Attachment 4. Qwest may redact all dollar figures from copies of agreements listed in the Matrices that have not been publicly recorded that Qwest provides to CLEC. Any dispute over whether terms have been redacted appropriately shall be resolved pursuant to the dispute resolution procedures set forth in this Agreement. Qwest makes no warranties concerning the accuracy of the information provided to CLEC; CLEC expressly acknowledges that Qwest's files contain only the original ROW instruments, and that the current owner(s) of the fee estate may not be the party identified in the document provided by Qwest.

10.8.4.2 Field Verification – Poles Ducts and Access Agreement Preparation (ROW). CLEC will review the Inquiry results and determine whether to proceed with field verification for Poles/Ducts or Access Agreement preparation for ROW. If field verification or Access Agreement preparation is desired, CLEC will sign and return Attachment 1.B of Exhibit D along with a check for the relevant verification fee (Field Verification Fee or Access Agreement Preparation Fee) plus \$10.00 per Access Agreement as consideration for the Access Agreement. Upon payment of the relevant fee and Access Agreement consideration, if applicable, Qwest will provide, as applicable: depending on whether the request is for Poles, Innerduct or ROW: (a) in the case of Poles or Duct, a field survey and site investigation of the Poles or Duct, including the preparation of distances and drawings, to determine availability of existing Poles/Innerduct; identification of Make-Ready costs required to provide Innerduct; the schedule in which the Make-Ready work will be completed; and, the annual recurring prices associated with the attachment of facilities; (b) in the case of ROW, the completed Access Agreement(s), executed and acknowledged by Qwest. Upon completion of the Access Agreement(s) by CLEC, in accordance with the instructions, terms and conditions set forth in Exhibit D, the Access Agreement becomes effective to convey the interest identified in the Access Agreement (if any). Any dispute regarding whether a legal agreement conveys a ROW shall be resolved between CLEC and the relevant third party or

parties, and such disputes shall not involve Qwest; and/or (c) In the case of Poles or Innerduct, estimates of Make-Ready costs and the annual recurring prices associated with the attachment of facilities shall be provided on Attachment 2 of Exhibit D and shall be completed according to the schedule in Exhibit D at paragraph 2.2. The Attachment 2 quotation shall be valid for ninety (90) calendar days.

10.8.4.2.1 CLEC-Performed Field Verification. At the option of CLEC, it may perform its own field verification (in lieu of Qwest performing same) with the following stipulations: 1) Verifications will be conducted by a Qwest approved contractor; 2) A Qwest contractor will monitor the activity of CLEC contractor and a current labor rate will be charged to CLEC; 3) CLEC will provide Qwest with a legible copy of manhole butterfly drawings that reflect necessary Make-Ready effort; and 4) Qwest will use the CLEC-provided butterfly drawings and documentation to check against existing jobs and provide a final field report of available Duct/Innerduct. CLEC will be charged standard rates for Tactical Planner time.

10.8.4.3 Order – Poles and Ducts. The review, signing and return of Attachment 2 of the General Information Document along with payment of the Make-Ready and prorated recurring access charges for the current relevant period (annual or semi-annual) shall be accepted as an Order for the attachment or occupancy. Upon receipt of the accepted Order from CLEC and applicable payment for the fees identified, Qwest will assign the requested space and commence any Make-Ready work which may be required. Qwest will notify CLEC when Poles/Innerduct are ready.

10.8.4.4 Make-Ready - Estimates of Make-Ready are used to cover actual Make-Ready costs.

10.8.4.4.1 If Qwest requests, CLEC will be responsible for payment of the actual Make-Ready costs determined if such costs exceed the estimate. Such payment shall be made within thirty (30) days of receipt of an invoice for the costs that exceed the estimate.

10.8.4.4.2 Within fifteen (15) business days of a request, Qwest will provide CLEC copies of records reflecting actual cost of Make-Ready work; provided, however, that, if Qwest does not possess all such records at the time of the request, then Qwest will provide copies of such records within fifteen (15) business days of receipt of such records. CLEC must request such records, if at all, within sixty (60) calendar days after written notification of the completion of the Make-Ready work.

10.8.4.4.3 If the actual Make-Ready costs are less than the estimate, an appropriate credit for the difference will be issued upon request. Such request must be received within sixty (60) calendar days following CLEC's receipt of copies of records if CLEC has requested records under this paragraph, or within sixty (60) calendar days after written notification of the completion of

Make-Ready work if CLEC has not requested records under this paragraph. Such credit will issue within ten (10) business days of Qwest's receipt of either all records related to such actual costs or CLEC's request for credit, whichever comes last, but in no event later than ninety (90) calendar days following the request for credit.

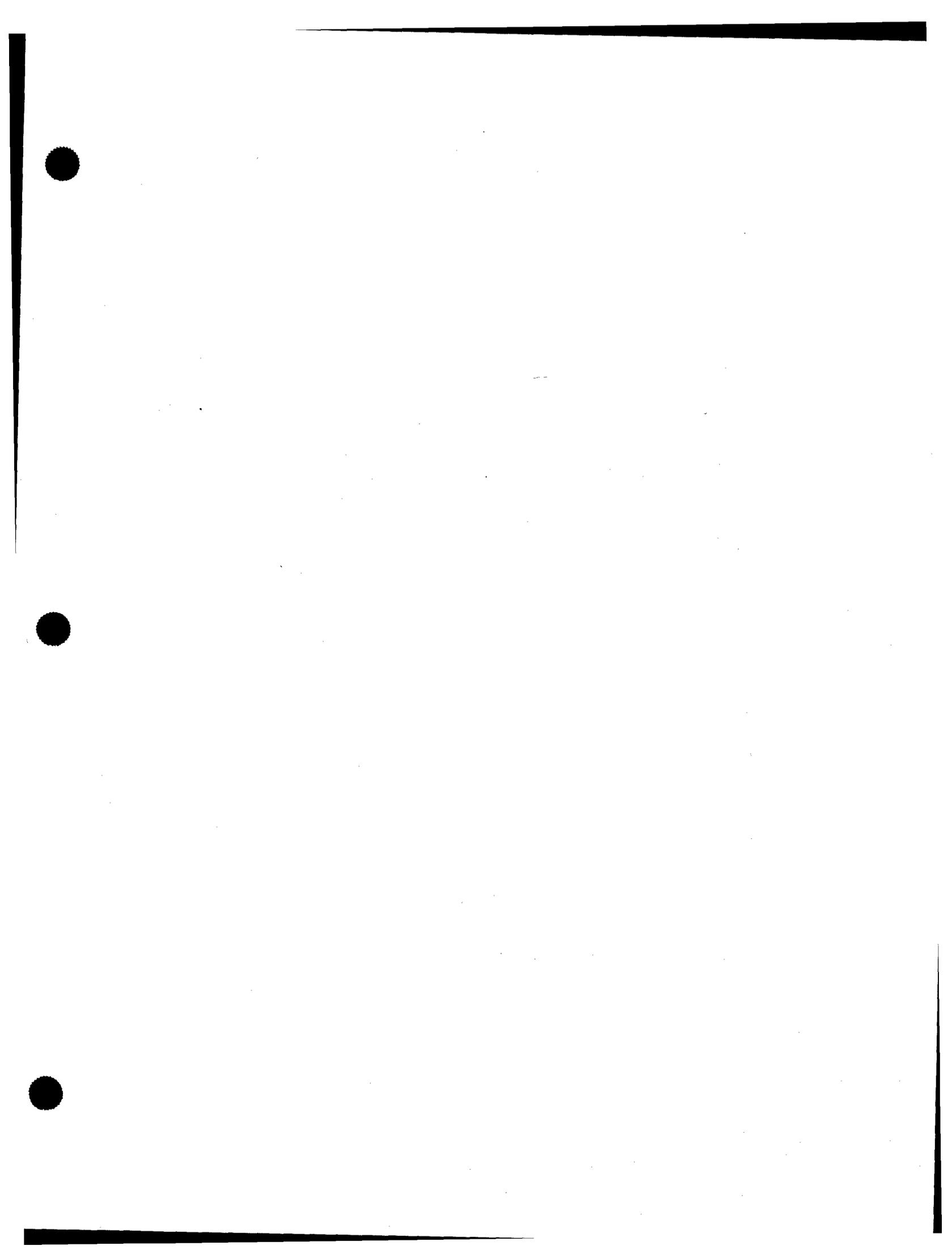
10.8.4.4.4 If CLEC cancels or if, due to circumstances unforeseen during inquiry/verification, Qwest denies the request for Poles, Ducts or ROW, upon CLEC request, Qwest will also refund the difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any. Such request must be made within thirty (30) calendar days of CLEC's receipt of written denial or notification of cancellation. Any such refund shall be made within ten (10) business days of either receipt of CLEC's request or Qwest's receipt of all records relating to the actual costs, whichever comes last, but in no event later than ninety (90) calendar days following the denial.

## **10.8.5 Billing**

~~CLEC agrees to pay Qwest Poles/Innerduct preparation charges in advance and usage fees ("Fees")~~the following fees in advance as specified in the Request and Order (Attachment 1 and Attachment 2 of the General Information Document). ~~Attachments 1.A, 1.B, and 2 of Exhibit D: Inquiry Fee, Field Verification Fee, Access Agreement Preparation Fee, Make-Ready Fee, Pole Attachment Fee, Innerduct Occupancy Fee and Access Agreement Consideration.~~ ~~Make-Ready Fees will be computed in compliance with applicable local, state and federal guidelines. Such FeesUsage fees for Poles/Innerduct (i.e., Pole Attachment Fee and Innerduct Occupancy Fee) will be assessed on an annual basis (unless CLEC requests a semi-annual basis). Annual Feesusage fees for Poles/Innerduct will be assessed as of January 1 of each year. Semi-annual usage fees for Poles/Innerduct will be assessed as of January 1 and July 1 of each year. Such FeesAll fees shall be paid within thirty (30) days following receipt of invoices therefor.~~ ~~Feesinvoices.~~ All fees are not refundable except as expressly provided herein.

## **10.8.6 Maintenance and Repair**

In the event of any service outage affecting both Qwest and CLEC, repairs shall be effectuated on a non-discriminatory basis as established by local, state or federal requirements. Where such requirements do not exist, repairs shall be made in the following order: electrical, telephone (EAS/local), telephone (long distance), and cable television, or as mutually agreed to by the users of the affected Poles/Innerduct.



## 10.8 Access to Poles, Ducts, Conduits, and Rights of Way

### 10.8.1 Description

10.8.1.1 Pole Attachments – Where it has ownership or control to do so, Qwest will provide CLEC with access to available pole attachment space for the placing of facilities for the purpose of transmitting Telecommunications Services.

10.8.1.1.1 The term Pole Attachment means any attachment by CLEC to a pole owned or controlled by Qwest.

10.8.1.2 Ducts and Conduits – Where it has ownership or control to do so, Qwest will provide CLEC with access to available ducts/conduits for the purpose of placing facilities for transmitting Telecommunications Services. A spare conduit will be leased for copper facilities only, and an innerduct for the purpose of placing fiber. CLEC may place innerduct in an empty conduit. Control of CLEC-installed spare innerduct shall vest in Qwest immediately upon installation; ownership of such innerduct shall vest to Qwest if and when CLEC abandons such innerduct. Within a multi-unit building, duct may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser.

10.8.1.2.1 The term Duct means a single enclosed raceway for conductors, cable and/or wire. Duct may follow streets, bridges, public or private ROW or may be within some portion of a multi-unit building. Within a multi-unit building, duct may traverse building entrance facilities, building entrance links, equipment rooms, remote terminals, cable vaults, telephone closets or building riser.

10.8.1.2.2 The term Conduit means a pipe placed in the ground in which cables and/or wires may be installed.

~~10.8.1.3 Rights of Way (ROW) – Where it has ownership or control to do so, Qwest will provide to CLEC, via a Quitclaim without warranty, access to available ROW for the purpose of placing facilities for transmitting Telecommunication Services. ROW includes land or other property owned or controlled by Qwest and may run under, on, above, across, along or through public or private property or enter multi-unit buildings.~~

10.8.1.3.1 ROW means a real property interest in privately-owned real property, but expressly excluding any public, governmental, federal or Native American, or other quasi-public or non-private lands, sufficient to permit Qwest to place telecommunications facilities on such real property; such property owner may permit Qwest to install and maintain facilities under, on, above, across, along or through private property or enter multi-unit buildings.

~~10.8.1.4 CLEC Duties – Pursuant to 47 U.S.C. Section 251 (b)(4) and Colorado rules, CLEC shall have the duty to afford access to the poles, ducts, conduits and rights-of-way of CLEC to Qwest on rates, terms, and conditions that~~

~~are consistent with Section 224, and further, CLEC shall provide reasonable access to poles, ducts and conduits, and right of way when feasible and when access is necessary for Qwest to provide service.~~

~~10.8.1.5 The phrase "ownership or control to do so" means the legal right, as a matter of state law, to convey an interest in real property.~~

## **10.8.2 Terms and Conditions**

Qwest shall provide CLEC non-discriminatory access to poles, ducts, conduit and rights of way on terms and conditions found in the Revised Qwest Right of Way, Pole Attachment and/or Innerduct Occupancy General Information Document, attached hereto as Exhibit D.<sup>1</sup> Qwest will not favor itself over CLEC when provisioning access to poles, ducts, conduits and rights of way. Qwest shall not give itself preference when assigning space.

10.8.2.1 Subject to the provisions of this Agreement, Qwest agrees to issue to CLEC authorization for CLEC to attach, operate, maintain, rearrange, transfer and remove at its sole expense its facilities on Poles/Innerduct or ROW owned or controlled in whole or in part by Qwest, subject to Orders placed by CLEC. Any and all rights granted to CLEC shall be subject to and subordinate to any future local, state and/or federal requirements.

10.8.2.2 Qwest will rely on such codes as the National Electrical Safety Code (NEC) to prescribe standards with respect to capacity, safety, reliability, and general engineering principles.

10.8.2.3 Federal requirements, such as those imposed by Federal Energy Regulatory Commission (FERC) and Occupational Safety and Health Administration (OSHA), will continue to apply to the extent such requirements affect requests for attachments or occupancy to Qwest facilities under Section 224(f)(1) of the Act.

10.8.2.4 CLEC shall provide access to a map of the requested Poles/Innerduct/ROW route, including estimated distances between major points, the identification and location of the Poles/Innerduct and ROW and a description of CLEC's facilities. Qwest agrees to provide to CLEC access to relevant plats, maps, engineering records and other data within ten (10) business days of receiving a bona fide request for such information, except in the case of extensive requests. Extensive requests involve the gathering of plats from more than one (1) location, span more than five (5) Wire Centers, or consist of ten (10) or more intra-Wire Center requests submitted simultaneously. Responses to extensive requests will be provided within a reasonable interval, not to exceed sixty (60) calendar days.

10.8.2.5 Except as expressly provided herein, or in the Pole Attachment Act of 1934 as amended and its regulations and rules, or in any applicable state

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<sup>1</sup> AT&T and WCom do not contest the need for some form of Agreement, such as Exhibit D. However, some of the terms and conditions set forth in the current Exhibit D and its attachments are in dispute, as a result Exhibit D and its attachments are not attached as a "Consensus" Agreement.

or municipal laws, nothing herein shall be construed to compel Qwest to construct, install, modify or place any Poles/Innerduct or other facility for use by CLEC.

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10.8.2.6 Qwest retains the right to determine the availability of space on Poles/Innerduct, conduit and ROW consistent with 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event Qwest determines that rearrangement of the existing facilities on Poles/Innerduct, conduit and ROW is required before CLEC's facilities can be accommodated, the actual cost of such modification will be included in CLEC's nonrecurring charges for the associated Order ("Make-Ready fee"). When modifications to a Qwest spare conduit include the placement of Innerduct, Qwest or CLEC will install the number of Innerduct required to fill the duct to its full capacity.

10.8.2.7 Qwest shall make manhole ingress and egress for Innerduct access available to CLEC. Qwest will perform a feasibility study to determine whether to provide a stub out via the pre-constructed knock out within the manhole, or to perform a core drill of the manhole.

10.8.2.8 Where such authority does not already exist, CLEC shall be responsible for obtaining the necessary legal authority to occupy ROW, and/or Poles/Innerduct on governmental, federal, Native American, and private rights of way. CLEC shall obtain any permits, licenses, bonds, or other necessary legal authority and permission, at CLEC's sole expense, in order to perform its obligations under this Agreement. CLEC shall contact all owners of public and private rights-of-way to obtain the permission required to perform the work prior to entering the property or starting any work thereon. See Section 10.8.4. CLEC shall comply with all conditions of rights-of-way and permits. Once such permission is obtained, all such work may be performed by Qwest or CLEC at the option of CLEC.

10.8.2.9 Access to a Qwest Central Office manhole will be permitted where technically feasible. If space is available, Qwest will allow access through the Central Office manhole to the POI (Point of Interconnection). There shall be a presumption that there shall be no fiber splices allowed in the Central Office manhole. However, where CLEC can establish the necessity and technical feasibility of splicing in the Central Office Manhole, such action shall be permitted.

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10.8.2.10 If CLEC requests Qwest to replace or modify existing Poles/Innerduct to increase its strength or capacity for the sole benefit of CLEC, CLEC shall pay Qwest the total actual replacement cost, Qwest's actual cost to transfer its attachments to new Poles/Innerduct, as necessary, and the actual cost for removal (including actual cost of destruction) of the replaced Poles/Innerduct, if necessary. Ownership of new Poles/Innerduct shall vest to Qwest. Upon request, Qwest shall permit CLEC to install Poles/Innerduct. Qwest reserves the right to reject any non-conforming replacement Pole/Conduit installed by CLEC that do not conform to the NESC, OSHA or local ordinances. To the extent that a modification is incurred for the benefit of multiple parties, CLEC shall pay a proportionate share of the total actual cost based on the ratio of the amount of new space occupied by the facilities of CLEC to the total

amount of space occupied by all parties including Qwest or its affiliates participating in the modification. Parties who do not initiate, request or receive additional space from a modification, are not required to share in the cost of the modification. CLEC, Qwest or any other party that uses a modification as an opportunity to bring its facilities into compliance with applicable safety or other requirements will be deemed to be sharing in the modification and will be responsible for its share of the modification cost. Attaching entities will not be responsible for sharing in the cost of governmentally mandated pole or other facility modification. Qwest does not and will not favor itself over other carriers when provisioning access to poles, innerduct and rights-of-way.

10.8.2.11 Notification of modifications initiated by or on behalf of Qwest and at Qwest's expense shall be provided to CLEC at least sixty (60) calendar days prior to beginning modifications. Such notification shall include a brief description of the nature and scope of the modification. If CLEC does not respond to a requested rearrangement of its facilities within sixty (60) days after receipt of written notice from Qwest requesting rearrangement, Qwest may perform or have performed such rearrangement and CLEC shall pay the actual cost thereof. No such notice shall be required in emergency situations or for routine maintenance of Poles/Innerduct completed at Qwest's expense.

10.8.2.12 Qwest reserves the right to make an on-site/final construction inspection of CLEC's facilities occupying the Poles/Innerduct system. CLEC shall reimburse Qwest for the actual cost of such inspections except where specified in this Section.

10.8.2.13 When final construction inspection by Qwest has been completed, CLEC shall correct such non-complying conditions within the reasonable period of time specified by Qwest in its written notice. If corrections are not completed within the specified reasonable period, occupancy authorizations for the ROW, Poles/Innerduct system where non-complying conditions remain uncorrected shall suspend forthwith, regardless of whether CLEC has energized the facilities occupying said Poles/Innerduct or ROW system and CLEC shall remove its facilities from said Poles/Innerduct or ROW in accordance with the provisions of this Section, provided, however, if the corrections physically cannot be made within such specified time, and CLEC has been diligently prosecuting such cure, CLEC shall be granted a reasonable additional time to complete such cure. Qwest may deny further occupancy authorization to CLEC until such non-complying conditions are corrected or until CLEC's facilities are removed from the Poles/Innerduct system where such non-complying conditions exist. If agreed between both Parties, Qwest shall perform or have performed such corrections and CLEC shall pay Qwest the actual cost of performing such work. Subsequent inspections to determine if appropriate corrective actions have been taken may be made by Qwest.

10.8.2.14 Once CLEC's facilities begin occupying the Poles/Innerduct or ROW system, Qwest may perform a reasonable number of inspections. Qwest shall bear the cost of such inspections unless the results of the inspection reveal any material violation or hazard, or that CLEC has in any other way failed to comply with the provisions of Section 10.8.2.20; in which case CLEC shall reimburse Qwest the costs of inspections and re-inspections, as required.

CLEC's representative may accompany Qwest on such field inspections. The cost of periodic inspection or any special inspections found necessary due to the existence of ~~sub-~~ sub-standard or unauthorized occupancies shall be billed separately.

10.8.2.15 The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to CLEC upon completion of the inspections.

10.8.2.16 Final construction, subsequent, and periodic inspections or the failure to make such inspections, shall not relieve CLEC of any responsibilities, obligations, or liability assigned under this Agreement.

10.8.2.17 CLEC may use individual workers of its choice to perform any work necessary for the attaching of its facilities so long as such workers have the same qualifications and training as Qwest's workers. CLEC may use any contractor approved by Qwest to perform Make-Ready Work.

10.8.2.18 If Qwest terminates an Order for cause, or if CLEC terminates an Order without cause, subject to 10.8.4.5, CLEC shall pay termination charges equal to the amount of fees and charges remaining on the terminated Order(s) and shall remove its facilities from the Poles/Innerduct within sixty (60) calendar days, or cause Qwest to remove its facilities from the Poles/Innerduct at CLEC's expense; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to Qwest until CLEC's facilities are physically removed. "Cause" as used herein shall include CLEC's use of its facilities in material violation of any applicable law or in aid of any unlawful act or making an unauthorized modification to Qwest's Poles/Innerduct, or, in the case of ROW, any act or omission that violates the terms and conditions of either (a) the ~~Quitclaim—Right—of Access Agreement~~ ("Quitclaim") by which Qwest ~~Quitclaim~~ conveys a right of access to the ROW to CLEC, or (b) the instrument granting the original ROW to Qwest or its predecessor.<sup>2</sup>

10.8.2.19 Qwest may abandon or sell any Poles/Innerduct, conduit or ROW at any time by giving written notice to CLEC. Any Poles, Innerduct, conduit or ROW that is sold, will be sold subject to all existing legal rights of CLEC. Upon abandonment of Poles/Innerduct, conduit or ROW, and with the concurrence of the other joint user(s), if necessary, CLEC shall, within sixty (60) calendar days of such notice, either: 1) continue to occupy the Poles/Innerduct, conduit or ROW pursuant to its existing rights under this Agreement if the Poles/Innerduct, conduit, or ROW is purchased by another party; 2) purchase the Poles/Innerduct, conduit or ROW from Qwest at the current market value; or 3) remove its facilities therefrom. Failure to explicitly elect one of the foregoing options within sixty (60) calendar days shall be deemed an election to purchase the Poles/Innerduct, conduit or ROW at the current market value if no other party purchased the Poles/Innerduct, conduit or ROW within this sixty (60) day period.

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<sup>2</sup> AT&T and WCom do not contest the need for some form of "Access" Agreement. However, some of the terms and conditions set forth in the current Access Agreement are in dispute, as a result the Access Agreement is not attached as a "Consensus" Agreement.

10.8.2.20 CLEC's facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated by reference, and any governing authority having jurisdiction. Where a difference in specifications exists, the more stringent shall apply. Notwithstanding the foregoing, CLEC shall only be held to such standard as Qwest its Affiliates or any other Telecommunications Carrier is held. Failure to maintain facilities in accordance with the above requirements or failure to correct as provided in Section 10.8.2.13 shall be cause for termination of the Order. CLEC shall in a timely manner comply with all requests from Qwest to bring its facilities into compliance with these terms and conditions.

10.8.2.21 Should Qwest under the provisions of this Agreement remove CLEC's facilities from the Poles/Innerduct covered by any Order, Qwest will deliver the facilities removed upon payment by CLEC of the cost of removal, storage and delivery, and all other amounts due Qwest. If CLEC removes facilities from Poles/Innerduct for other than repair or maintenance purposes, no replacement on the Poles/Innerduct shall be made until all outstanding charges due Qwest for previous occupancy have been paid in full. CLEC shall advise Qwest in writing as to the date on which the removal of facilities from the Poles/Innerduct has been completed.

10.8.2.22 If any facilities are found attached to Poles/Innerduct for which no order is in effect, Qwest, without prejudice to its other rights or remedies under this Agreement, may assess a charge and CLEC agrees to pay a charge of \$200.00 per Pole or \$200 per innerduct run between two manholes, plus payment as specified in this Section. Qwest shall waive the unauthorized attachment fee if the following conditions are both met: (1) CLEC cures such unauthorized attachment (by removing it or submitting a valid Order for the attachment in the form of Attachment 2 of Exhibit D,<sup>3</sup> within thirty (30) days of written notification from Qwest of the unauthorized attachment; and (2) the unauthorized attachment did not require Qwest to take curative measures itself (e.g., pulling additional innerduct) prior to cure by CLEC. Qwest shall also waive the unauthorized attachment fee if the unauthorized attachment arose due to error by Qwest rather than CLEC. CLEC is required to submit in writing, within ten (10) business days after receipt of written notification from Qwest of the unauthorized occupancy, a Poles/Innerduct application. If such application is not received by Qwest within the specified time period, CLEC will be required to remove its unauthorized facility within thirty (30) calendar days of the final date for submitting the required application, or Qwest may remove CLEC's facilities without liability, and the cost of such removal shall be borne by CLEC.

10.8.2.23 No act or failure to act by Qwest with regard to an unauthorized occupancy shall be deemed as the authorization of the occupancy. Any subsequently issued authorization shall not operate retroactively or constitute a waiver by Qwest of any of its rights or privileges under this Agreement or

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<sup>3</sup> As indicated above, certain terms and conditions in Exhibit D and its attachments remain in dispute.

otherwise. CLEC shall be subject to all liabilities of the Agreement in regard to said unauthorized occupancy from its inception.

10.8.2.24 Qwest will provide CLEC non-discriminatory access to poles, ducts, conduits and ROW pursuant to 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224. In the event of a conflict between this SGAT, on one hand, and 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern. Further, in the event of a conflict between Exhibit D,<sup>4</sup> on one hand, and this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224, on the other, this SGAT or 47 USC § 224 and FCC orders, rules and regulations pursuant to 47 USC § 224 shall govern, provided however, that any Quitclaim Access Agreement that has been duly executed (and, in cases where the underlying ROW agreement was recorded in the real property records for the county in which the ROW is executed, located, acknowledged and recorded in the real property records for the county in which the ROW is located) shall govern in any event pursuant to its terms.

10.8.2.25 Nothing in this SGAT shall require Qwest to exercise eminent domain on behalf of CLEC.

### **10.8.3 Rate Elements**

~~Qwest fees for attachments are in accordance with Section 224 of the Act and FCC orders, rules and regulations promulgated thereunder, as well as the rates established by the Commission including the following rates, are reflected in Exhibit A.~~

~~10.8.3.1 Inquiry Fee. A non-refundable pre-paid charge used to recover the costs associated with performing an internal record review to determine if a requested route and/or facility is available, or with respect to ROW, to determine the information necessary to create the ROW Matrix, which identifies, for each ROW, the name of the original grantor and the nature of the ROW (e.g. easement, lease, etc.). Separate Inquiry Fees apply for ROW, Poles and Conduit/Innerduct.~~

~~10.8.3.2 Field Verification Fee/Quitclaim Preparation Fee. In the case of Poles and Innerduct, the Field Verification Fee is a non-refundable pre-paid charge which recovers the estimated actual costs for a field survey verification required for a route and to determine scope of any required Make-Ready work. Separate Field Verification Fees apply for Poles and Manholes. In the case of ROW, the Quitclaim Preparation Fee is a non-refundable, pre-paid charge which recovers the estimated actual costs for preparation of the Quitclaim for each ROW requested by the CLEC. Field Verification and Quitclaim Preparation Fees shall be billed in advance.~~

~~10.8.3.3 Make-Ready Fee. A pre-paid non-refundable (other than true-up) charge which recovers the cost of necessary work required to make the requested facility/ROW available for access. For innerduct, this could include,~~

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<sup>4</sup> *Id.*

~~but is not limited to, the placing of innerduct in conduit/duct systems or core drilling of manholes. For pole attachment requests, this could include, but is not limited to, the replacement of poles to meet required clearances over roads or land. For ROW, this Make-Ready could include, but is not limited to, personnel time, including attorney time. With respect to ROW, Make-Ready work refers to legal or other investigation or analysis arising out of CLEC's failure to comply with the process described in Exhibit D for ROW or other circumstances giving rise to such work beyond the simple preparation of one or more Quitclaims. The estimated pre-paid fee shall be billed in advance.~~

~~10.8.3.4 Pole Attachment Fee. A pre-paid fee which is charged for the occupancy, including during any Make-Ready period, of one foot of pole space (except for antenna attachment which requires two feet). This fee shall be annual unless CLEC requests that it be semi-annual.~~

~~10.8.3.5 Innerduct Occupancy Fee. A pre-paid fee which is charged for the occupancy, including during any Make-Ready period, of an innerduct on a per foot basis. This fee shall be annual unless CLEC requests that it be semi-annual.~~

~~10.8.3.6 Quitclaim Consideration. A pre-paid fee which constitutes consideration for Quitclaiming the ROW to CLEC. This fee shall be a one-time (i.e. non-recurring) fee.~~

~~10.8.4~~ 10.8.2.26 Upon CLEC request, Qwest will certify to a landowner with whom Qwest has an ROW agreement, the following:

10.8.2.26.1 that the ROW agreement with Qwest does not preclude the landowner from entering into a separate ROW agreement with CLEC; and

10.8.2.26.2 that there will be no penalty under the agreement between the landowner and Qwest if the landowner enters into a ROW agreement with CLEC.

#### 10.8.4      **Ordering**

There are two (2) steps required before placing an Order for access to ROW, Innerduct and Pole Attachment: Inquiry Review and Field Verification

10.8.4.1 Inquiry Reviews. Upon receipt of an inquiry regarding ROW access, Pole Attachment or Innerduct Occupancy, Qwest will provide CLEC with Exhibit D.<sup>5</sup> CLEC will review the documents and provide Qwest with maps of the desired area indicating the routes and entrance points for proposed attachment, proposed occupancy or proposed CLEC construction on Qwest owned or controlled Poles, Innerduct and ROW as well as the street addresses of any multi-unit buildings upon or through which CLEC proposes construction on ROW

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<sup>5</sup> *Id.*

owned or controlled by Qwest. CLEC will include the appropriate Inquiry Fee with a completed Attachment 1.A from Exhibit D.<sup>6</sup>

10.8.4.1.1 Inquiry Review – Duct/Conduit. Qwest will complete the database inquiry and prepare a duct structure diagram (referred to as a “Flatline”) which shows distances and access points (such as manholes). Along with the Flatline will be estimated costs for field verification of available facilities. These materials will be provided to the CLEC within ten (10) calendar days or within the time frames of the applicable federal or state law, rule or regulation. This time frame is applicable to the standard inquiry of thirty (30) Utility Holes or fewer. An inquiry which exceeds the standard will have negotiated completion dates.

~~10.8.4.1.2 Inquiry Review – Poles. Qwest will provide the name and contact number for the appropriate local field engineer for joint validation of the poles and route and estimated costs for field verification on Attachment 1.B of Exhibit D within ten (10) calendar days of the request. This time frame is applicable to the standard inquiry of one hundred (100) poles or fewer. An inquiry which exceeds the standard will have negotiated completion dates.~~

~~10.8.4.1.3 Inquiry Review – ROW. Qwest shall, upon request of CLEC, provide the ROW Matrix to CLEC within ten (10) days of the request. Qwest makes no warranties concerning the accuracy of the information provided to CLEC; CLEC expressly acknowledges that Qwest’s files contain only the original ROW instruments, and that the current owner of the fee estate may not be the party identified in the document provided by Qwest.~~

~~10.8.4.2 Field Verification – Poles Ducts and Quitclaim Preparation (ROW). CLEC will review the Inquiry results and determine whether to proceed with field verification for Poles/Ducts or Quitclaim preparation for ROW. If field verification or Quitclaim preparation is desired, CLEC will sign and return Attachment 1.B of Exhibit D along with a check for the relevant verification fee (Field Verification Fee or Quitclaim Preparation Fee) plus \$10.00 per Quitclaim as consideration for the Quitclaim. Upon payment of the relevant fee and Quitclaim consideration, if applicable, Qwest will provide, as applicable: depending on whether the request is for Poles, Innerduct or ROW: (a) in the case of Poles or Duct, a field survey and site investigation of the Poles or Duct, including the preparation of distances and drawings, to determine availability of existing Poles/Innerduct; identification of Make-Ready costs required to provide Innerduct; the schedule in which the Make-Ready work will be completed; and, the annual recurring prices associated with the attachment of facilities, and/or (b) in the case of ROW, the completed Quitclaim(s), executed and acknowledged by Qwest. Upon completion of the Quitclaim(s) by CLEC, in accordance with the instructions, terms and conditions set forth in Exhibit D, the Quitclaim becomes effective to Quitclaim the interest identified in the Quitclaim (if any). In the case of Poles or Innerduct, estimates of~~

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<sup>6</sup> *Id.*

~~Make-Ready costs and the annual recurring prices associated with the attachment of facilities shall be provided on Attachment 2 of Exhibit D and shall be completed according to the schedule in Exhibit D at paragraph 2.2. The Attachment 2 quotation shall be valid for ninety (90) calendar days.~~

10.8.4.2.1 CLEC-Performed Field Verification. At the option of CLEC, it may perform its own field verification (in lieu of Qwest performing same) with the following stipulations: 1) Verifications will be conducted by a Qwest approved contractor; 2) A Qwest contractor will monitor the activity of CLEC contractor and a current labor rate will be charged to CLEC; 3) CLEC will provide Qwest with a legible copy of manhole butterfly drawings that reflect necessary Make-Ready effort; and 4) Qwest will use the CLEC-provided butterfly drawings and documentation to check against existing jobs and provide a final field report of available Duct/Innerduct. CLEC will be charged standard rates for Tactical Planner time.

10.8.4.3 Order – Poles and Ducts. The review, signing and return of Attachment 2 of the General Information Document along with payment of the Make-Ready and prorated recurring access charges for the current relevant period (annual or semi-annual) shall be accepted as an Order for the attachment or occupancy. Upon receipt of the accepted Order from CLEC and applicable payment for the fees identified, Qwest will assign the requested space and commence any Make-Ready work which may be required. Qwest will notify CLEC when Poles/Innerduct are ready.

10.8.4.4 Make-Ready - Estimates of Make-Ready are used to cover actual Make-Ready costs.

10.8.4.4.1 If Qwest requests, CLEC will be responsible for payment of the actual Make-Ready costs determined if such costs exceed the estimate. Such payment shall be made within thirty (30) days of receipt of an invoice for the costs that exceed the estimate.

10.8.4.4.2 Within fifteen (15) business days of a request, Qwest will provide CLEC copies of records reflecting actual cost of Make-Ready work; provided, however, that, if Qwest does not possess all such records at the time of the request, then Qwest will provide copies of such records within fifteen (15) business days of receipt of such records. CLEC must request such records, if at all, within sixty (60) calendar days after written notification of the completion of the Make-Ready work.

10.8.4.4.3 If the actual Make-Ready costs are less than the estimate, an appropriate credit for the difference will be issued upon request. Such request must be received within sixty (60) calendar days following CLEC's receipt of copies of records if CLEC has requested records under this paragraph, or within sixty (60) calendar days after written notification of the completion of Make-Ready work if CLEC has not requested records under this

paragraph. Such credit will issue within ten (10) business days of Qwest's receipt of either all records related to such actual costs or CLEC's request for credit, whichever comes last, but in no event later than ninety (90) calendar days following the request for credit.

10.8.4.4.4 If CLEC cancels or if, due to circumstances unforeseen during inquiry/verification, Qwest denies the request for Poles, Ducts or ROW, upon CLEC request, Qwest will also refund the difference between the actual Make-Ready costs incurred and those prepaid by CLEC, if any. Such request must be made within thirty (30) calendar days of CLEC's receipt of written denial or notification of cancellation. Any such refund shall be made within ten (10) business days of either receipt of CLEC's request or Qwest's receipt of all records relating to the actual costs, whichever comes last, but in no event later than ninety (90) calendar days following the denial.

#### **10.8.5 Billing**

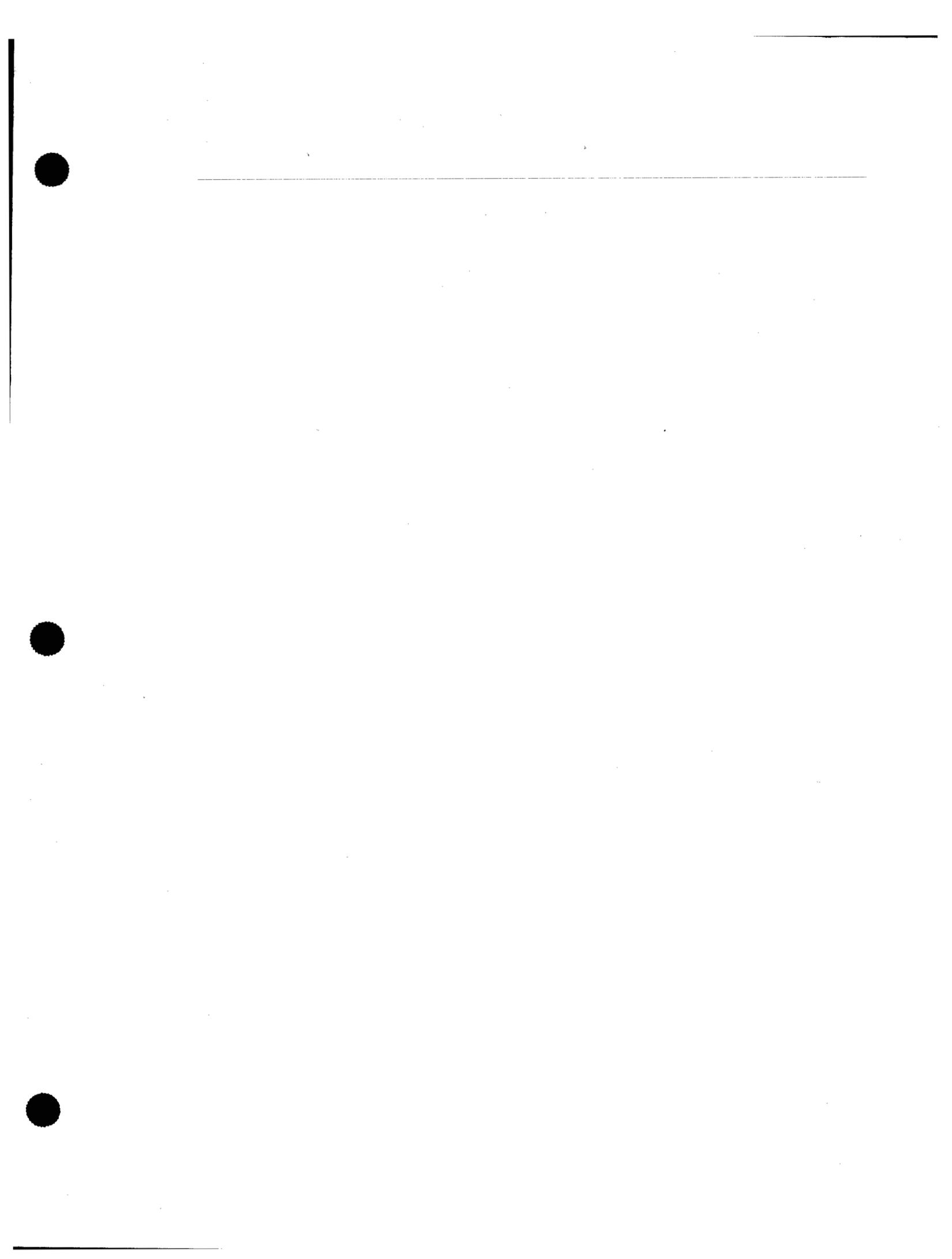
CLEC agrees to pay the following fees in advance as specified in Attachments 1.A, 1.B, and 2 of Exhibit D: Inquiry Fee, Field Verification Fee, ~~Quitclaim~~Access Agreement Preparation Fee, Make-Ready Fee, Pole Attachment Fee, Innerduct Occupancy Fee and ~~Quitclaim~~Consideration.~~Access Agreement Consideration.~~<sup>7</sup> Make-Ready Fees will be computed in compliance with applicable local, state and federal guidelines. Usage fees for Poles/Innerduct (i.e., Pole Attachment Fee and Innerduct Occupancy Fee) will be assessed on an annual basis (unless CLEC requests a semi-annual basis). Annual usage fees for Poles/Innerduct will be assessed as of January 1 of each year. Semi-annual usage fees for Poles/Innerduct will be assessed as of January 1 and July 1 of each year. All fees shall be paid within thirty (30) days following receipt of invoices. All fees are not refundable except as expressly provided herein.

#### **10.8.6 Maintenance and Repair**

In the event of any service outage affecting both Qwest and CLEC, repairs shall be effectuated on a non-discriminatory basis as established by local, state or federal requirements. Where such requirements do not exist, repairs shall be made in the following order: electrical, telephone (EAS/local), telephone (long distance), and cable television, or as mutually agreed to by the users of the affected Poles/Innerduct.

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<sup>7</sup> *Id.*



**Date General Information Provided by Qwest:** \_\_\_\_\_  
**General Agreement Number:** \_\_\_\_\_  
**BAN Number(must be assigned before processing):** \_\_\_\_\_

**REVISED QWEST RIGHT OF WAY, POLE ATTACHMENT, INNERDUCT OCCUPANCY GENERAL INFORMATION: EFFECTIVE ~~7/17/00~~ 7/18/00**

1. **PURPOSE.** The purpose of this General Information document is to share information and provide or deny permission to attach and maintain CLEC's facilities ("Facilities") to Qwest Corporation's ("Qwest") Poles, to place Facilities on or within Qwest's Innerduct (collectively "Poles/Innerduct") and to obtain access to Qwest's private right of way ("ROW"), to the extent Qwest has the right to grant such access. This General Information is necessary to determine if Qwest can meet the needs of the CLEC's request but does not guarantee that physical space or access is currently available. Permission will be granted on a first-come, first-serve basis on the terms and conditions set forth in the appropriate agreement pertaining to "Poles/Innerduct". Quotes are effective for thirty (30) days.
2. **PROCESS.** The Qwest process is designed to provide the CLEC the information so as to assist CLEC and Qwest to make Poles, Innerduct and ROW decisions in a cost-efficient manner. The Process has these distinct steps:

2.1 Inquiry Review - Attachment 1.A (Database Search). The CLEC is requested to review this document and return Attachment 1.A along with two copies of a map and the nonrefundable Inquiry Fee, calculated in accordance with Attachment 1.A hereto. These fees are intended to cover Qwest's expenses associated with performing an internal record (database) review, preparing a cost estimate for the required field survey, setting up an account, and determining time frames for completion of each task to meet the CLEC's Request. ~~Please be~~ Be sure a BAN number is assigned by the Product Manager (call 303-~~896-3194 or 0789~~ 896-0789)-before sending Attachment 1.A.

As indicated on Attachment 1.A, a copy of the signed Attachment and maps of the desired route ~~should~~ must be sent to the Product Manager while the fees ~~should~~ must be sent to the Qwest CLEC Joint Use Manager with the original signed Attachment 1.A. The map should clearly show street names and highways along the entire route, and specific locations of entry and exit of the ROW/duct/pole system. Area Maps should be legible and identify all significant geographic characteristics including, but not limited to, the following: Qwest central offices, streets, cities, states, lakes, rivers, mountains, etc. Qwest reserves the right to reject illegible or incomplete maps. If CLEC wishes to terminate at a particular manhole (such as a POI) it must be indicated on the maps. For ROW: Section, Range and Township, to the ¼ section must also be provided.

Qwest will complete the Inquiry review and prepare and return a Poles/Innerduct Verification/ROW ~~Quitclaim~~ Access Agreement Preparation Costs Quotation (Attachment 1.B) to the CLEC generally within ten (10) days or the applicable federal or state law, rule or regulation that governs this Agreement in the state in which Innerduct attachment is requested. In the case of poles, Qwest will assign a Field Engineer and provide his/her name and phone number to the CLEC. The Field engineer will check the local database and be available for a joint verification with the CLEC. This time frame is applicable to the standard inquiry of one hundred (100) Poles or fewer, or thirty (30) Utility Hole sections or fewer, or two (2) miles of linear ROW or less. The Poles/Innerduct Verification/ROW Access Agreement Preparation Costs Quotation will be valid for thirty (30) calendar days from the date of quotation. The Inquiry step results only in the location and mapping of Qwest facilities and does not indicate whether space is available. The resulting information is provided with Attachment 1.B.

In the case of ROW, Qwest will prepare and return a ROW information matrix and a copy of all publicly recorded agreements listed in the ROW Matrix, within ten (10) days, which days. The ROW Matrix will

identify (a) the owner of the ROW as reflected in Qwest's records, and (b) the nature of each ROW (i.e., publicly recorded easement, license, etc.) and non-recorded). The ROW information matrix will also indicate whether or not Qwest has a copy of the Easement Agreement in its possession. Qwest makes no representations or warranties regarding the accuracy of its records, and CLEC acknowledges that, to the extent that real property rights run with the land, the original granting party may not be the current owner of the property.

In the case of MDUs, Qwest will prepare and return an MDU information matrix, within ten (10) days, which will identify (a) the owner of the MDU as reflected in Qwest's records, and (b) whether or not Qwest has a copy of the Easement Agreement in its possession. Qwest makes no representations or warranties regarding the accuracy of its records, and CLEC acknowledges that the original landowner may not be the current owner of the property.

Qwest will provide to CLEC a copy of agreements listed in the Matrices that have not been publicly recorded if and only if CLEC obtains authorization for such disclosure from the third party owner(s) of the real property at issue by an executed version of either the Consent to Disclosure form or the Consent Regarding Access Agreement form, both of which are included in Attachment 4. Qwest may redact all dollar figures from copies of agreements listed in the Matrices that have not been publicly recorded that Qwest provides to CLEC.

If there is no other effective agreement (i.e., an Interconnection Agreement) between CLEC and Qwest concerning access to Poles, Ducts and ROW, then Attachment 3 must be executed by both parties in order to start the Inquiry Review and in order for CLEC to obtain access to Poles, Ducts and/or ROW.

2.2 Attachment 1.B (Verification) & Attachment 4 (Quitclaim/Access Agreement Preparation). With respect to Poles and Innerduct, upon review and acceptance of signed Attachment 1.B and payment of the estimated verification costs by the CLEC, Qwest will conduct facilities verification and provide the requested information which may or may not include the following: a review of public and/or internal Qwest right-of-ways records for restrictions, identification of additional rights-of-way required; a field survey and site investigation of the Innerduct, including the preparation of distances and drawings, to determine availability on existing Innerduct; identification of any make-ready costs required to be paid by the CLEC, if applicable, prior to installing its facilities. In the case of Poles, Attachment 1.B orders the field verification which may be done jointly. CLECA copy of the signed Attachment 1.B should be sent to the Product Manager while the appropriate fees should be sent to the Qwest-CLEC Joint Use Manager with the original signed Attachment 1.B. Upon completion of the verification, Attachment 2 will be sent to the CLEC by Qwest.

With respect to ROW, upon review and acceptance of signed Attachment 1.B and payment of the ROW conveyance consideration, Qwest will deliver to the CLEC an executed and acknowledged Quitclaim of Right of Access Agreement to the CLEC in the form attached hereto as Attachment 4 (the "Quitclaim"/"Access Agreement"). In the event that the ROW in question was created by a publicly recorded document and Qwest has a copy of such document in its files, a copy of the Easement Agreement, as defined in the Quitclaim/Access Agreement, will be attached to the Quitclaim/Access Agreement and provided to the CLEC at the time of delivery CLEC of the Quitclaim/Access Agreement. If the ROW was created by a document that is not publicly recorded, or if Qwest does not have a copy of the Easement Agreement in its possession, the Quitclaim/Access Agreement will not have a copy of the Easement Agreement attached.

~~Verification/Quitclaim Preparation work shall be completed within the time frames designated in the table below:~~

SIZE OF VERIFICATION REQUEST	TIME LIMIT (DAYS)
Less than or equal to 100 poles or 30 manholes or 2 miles of linear ROW	35

Less than or equal to 200 poles or 60 manholes or 4 miles of linear ROW	50
Less than or equal to 300 poles or 90 manholes or 6 miles of linear ROW	65
Less than or equal to 400 poles or 120 manholes or 8 miles of linear ROW	80
Less than or equal to 500 poles or 150 manholes or 10 miles of linear ROW	95
Greater than 500 poles or 150 manholes or 10 miles of linear ROW	As Negotiated Between U S WEST and CLEC

Qwest is required to respond to each Attachment 1.B. submitted by CLEC within 35 days of receiving the Attachment 1.B. To the extent that an Attachment 1.B. includes a large number of poles (greater than 100 poles) or a large amount of conduit, innerduct (greater than 30 manholes) or ROW (greater than 2 linear miles), Qwest is required to approve or deny access commencing no later than 35 days after receiving Attachment 1.B., and Qwest is required to approve or deny access on a rolling basis, i.e., at the time Qwest determines the propriety of such access to such poles, conduit, innerduct or ROW, so that CLEC is not required to wait until all poles, conduit, innerduct or ROW in a particular Attachment 1.B. are/is approved or denied prior to being granted any access at all.

In the case of ROW, after Qwest has delivered the Quitclaim Access Agreement, the CLEC will be required to obtain the property owner's notarized signature on the Consent that is a part of the Quitclaim Access Agreement. Although Qwest will provide the identity of the original grantor of the ROW, as reflected in Qwest's records, the CLEC is responsible for determining the current owner of the property and obtaining the proper signature and acknowledgement. If Qwest does not have a copy of the Easement Agreement in its records, it is the responsibility of the CLEC to obtain a copy of the Easement Agreement. After the CLEC has obtained the properly executed and acknowledged Consent: (a) if the ROW was created by a publicly recorded document, the CLEC must record the Quitclaim Access Agreement (with the Consent and the Easement Agreement attached) in the real property records of the county in which the property is located; (b) if the ROW was created by a grant or agreement that is not publicly recorded, (i) CLEC must provide Qwest with a copy of the properly executed and acknowledged Consent, and (ii) upon receipt of such Consent, Qwest will provide the CLEC with a copy of the Easement Agreement with the monetary terms redacted, and (iii) the CLEC must then record the Quitclaim, together with the Consent and the Easement Agreement, in the real property records for the county in which the property is located; redacted; or (c) if the ROW was created by a non-publicly recorded document, but Qwest does not have a copy of the Easement Agreement in its possession, the CLEC (i) must obtain a copy of the Easement Agreement or other suitable documentation reasonably satisfactory to Qwest to describe the real property involved and the underlying rights giving rise to the quitclaim, and (ii) must record the Quitclaim (with the Consent and the Easement Agreement or other Access Agreement.

documentation attached) in the real property records of the county in which the property is located. In any case, recordation of the properly completed, executed and acknowledged Quitclaim gives effect to Qwest's quitclaim of access to Qwest's ROW.

2.3 Poles/Duct Order Attachment 2 (Access). In the case of Poles and Innerduct, upon completion of the inquiry and verification work described in Section 2.2 above, Qwest will provide the CLEC a Poles/Innerduct Order (Attachment 2) containing annual recurring charges, estimated Make-ready costs. Upon receipt of the executed Attachment 2 Order form from the CLEC and applicable payment for the Make-Ready Fees identified, Qwest will assign the CLEC's requested space; Qwest will also commence the Make-ready work within 30 days following payment of the Make-Ready Fees. Qwest will notify CLEC when Poles/Innerduct are ready for attachment or placement of Facilities. A copy of the signed Attachment 2 form should go to the Product Manager while the payment should go to the Joint Use Manager along with the original signed Attachment 2.

NOTE: Make-ready work performed by Qwest concerns labor only. For Poles it involves rearrangement to accommodate the new attachment. For Innerduct, it involves placing the standard three innerducts in the conduit to accommodate fiber cable where spare conduit exists. Segments without conduit space

are considered "blocked". Qwest will consider repair or clearing damaged facilities, but may not construct new facilities as part of Make-ready work.

Construction work to place conduit or replace poles may be required where facilities are blocked. The CLEC may contract separately with a Qwest-approved contractor to complete the construction provided a Qwest inspector inspects the work during and after construction. Construction attaching to or entering ~~Qwest-Qwest~~ owned structure must conform to Qwest standards. If other parties benefit from construction, the costs may be divided among the beneficiaries. Construction costs are not included in Attachment 2. The CLEC is not encouraged to sign the access agreement (Attachment 2) until provisions have been made for construction.

2.4 Provision of ROW/Poles/Innerduct. Qwest agrees to issue to CLEC for any lawful telecommunications purpose, a nonexclusive, revocable Order authorizing CLEC to install, maintain, rearrange, transfer, and remove at its sole expense its Facilities on Poles/Innerduct to the extent owned or controlled by Qwest. Qwest provides access to Poles/Innerduct/ROW in accordance with the applicable federal, state, or local law, rule, or regulation, incorporated herein by this reference, and said body of law, which governs this Agreement in the state in which Poles/Innerduct is provided. Any and all rights granted to CLEC shall be subject to and subordinate to any future federal, state, and/or local requirements. Nothing in this General Information shall be construed to require or compel Qwest to construct, install, modify, or place any Poles/Innerduct or other facility for use by the CLEC.

The costs included in the Poles/Innerduct Verification Fee are used to cover the costs incurred by Qwest in determining if Poles/Innerduct space is available to meet the CLEC's request; however, the CLEC must agree and will be responsible for payment of the actual costs incurred if such costs exceed the estimate. If the actual costs are less than the estimate, an appropriate credit can be provided upon request. If Qwest denies access, Qwest shall do so in writing, specifying the reasons for denial along with the information upon which such denial is premised within 45 days of the initial inquiry.

Likewise, the fees included in the ROW processing costs quotation are used to cover the costs incurred by Qwest in searching its databases and preparing the Quitclaim Access Agreement. In the event that complications arise with respect to preparing the Quitclaim Access Agreement or any other aspect of quitclaiming/conveying access to Qwest's ROW, the CLEC agrees to be responsible for payment of the actual costs incurred if such costs exceed the standard fees; actual costs shall include, without limitation, personnel time, including attorney time.

### 3. DISPUTE RESOLUTION

3.1. Other than those claims over which a federal or state regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA") unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.

3.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

3.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

~~34.~~ ~~\_\_\_\_\_~~ ~~If~~ ~~34.~~ If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

**ATTACHMENT 1. A**  
**Poles/Innerduct/ or ROW Inquiry Preparation Fee**  
 General Agreement No: \_\_\_\_\_  
 BAN Number (must be assigned before processing): \_\_\_\_\_  
**Poles/Innerduct/ROW Inquiry Preparation Fee**

Date Submitted: \_\_\_\_\_ Date Replied to CLEC: \_\_\_\_\_

CLEC Name: \_\_\_\_\_

Contact name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_ Name \_\_\_\_\_ Contact  
 name: \_\_\_\_\_

Billing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ e-mail address: \_\_\_\_\_

e-mail address: \_\_\_\_\_

State or location of inquiry: \_\_\_\_\_

Qwest Account Mgr: \_\_\_\_\_ Acct Mgr Phone: \_\_\_\_\_

Poles/Innerduct Permit Database Search Costs Quotation  
 (One Mile Minimum)

<u>Miles</u>	<u>Costs (Minimum)</u>	<u>Costs</u>	<u>Est.</u>
	<u>Total</u>		
1. Pole Inquiry Fee \$ _____	(see attached pricing chart _____)	\$ _____ (chart) X _____	= _____
2. Innerduct Inquiry Fee \$ _____	(see attached pricing chart _____)	\$ _____ (chart) X _____	= _____
3. ROW Records Inquiry \$ _____	(see attached pricing chart _____)	\$ _____ (chart) X _____	= _____
4. Estimated Interval for Completion of Items 1, 2 and/or 3: _____	10	Days	
5. Additional requirements of CLEC: _____			

This Inquiry will result in (a) ~~in the case of~~ Poles and ~~Innerduct~~, Innerduct: a drawing of the duct or innerduct structure fitting the requested route, if available, and a quote of the charges for field verification, and/or (b) in the case of ROW a ROW identification matrix, and quote of the charges for preparation of, and consideration for, the necessary ~~Quit~~ claims. ~~In the case of~~ Access Agreements. For Poles, the name and telephone number of the Field Engineer will be provided so that the CLEC may contact the Qwest Field engineer and discuss attachment plans. If a field verification of the poles is required, Attachment 1.B must be completed and the appropriate charges paid. Innerduct verification is always needed.

By signing below and providing payment of the Estimated Costs identified above, the CLEC desires Qwest to proceed with the processing of its database/records search and acknowledges receipt of this General Information, including the General Terms and Conditions under which Qwest offers such Poles/Innerduct.

		Qwest Corporation

Signature		Signature	
		JOHN CARVETH	
Name Typed or Printed		Name Typed or Printed	
		PRODUCT MANAGER	
Title		Title	
Date		Date	

This signed form (original) should be sent with a check for the Inquiry amount (~~\$114 per mile or \$171~~ \$X per mile) to:

to:  
**Pam Fisher, QwestCLEC Joint Use, 6912 S Quentin, Suite 101, Englewood, CO 80112 303-792-6990**  
~~303-792-6990~~

A copy of this form should be sent with two acceptably-detailed maps showing the requested route to:\_\_\_

\_\_\_\_\_  
**John Carveth, Qwest Structure Product Manager, Suite 2330, 1801 California, Denver, CO**  
**80202 303-896-0789**  
~~303-896-0789~~

**ATTACHMENT 1.B**

General Agreement No. \_\_\_\_\_  
 BAN Number: \_\_\_\_\_

**Poles/Innerduct Verification/ROW Quitclaim Access Agreement Preparation Costs Quotation**

Date Nonrefundable Received: \_\_\_\_\_ Date Replied to CLEC: \_\_\_\_\_

**\*\*NOTE: THIS ATTACHMENT WILL BE COMPLETED BY QWEST AND SENT TO THE CLEC FOR SIGNATURE AFTER THE DATABASE INQUIRY IS COMPLETE.\*\***

- |  | Estimated Costs | Number                            | Total Charge                     |
|--|-----------------|-----------------------------------|----------------------------------|
| 1. Pole Field Verification Fee (10 pole minimum) <del>see attached pricing chart</del> (minimum) _____ | \$ _____        |                                   |                                  |
| 2. Innerduct Field Verification Fee <del>see attached pricing chart</del> _____                        | \$ _____        |                                   |                                  |
| 3. <u>Quitclaim Access Agreement Preparation and Consideration</u> _____                               | \$ _____        | \$ ___ per <u>Quitclaim</u> _____ | \$ _____ <u>Access Agreement</u> |
| 4. Estimated Interval for Completion of Items 1, 2 and/or 3: _____ Working Days                        |                 |                                   |                                  |
| 5. Additional requirements of CLEC: _____  |                 |                                   |                                  |

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

By signing below and providing payment of the Total Estimated Costs identified above, the CLEC desires Qwest to proceed with the processing of its field survey/preparation of Quitclaims, Access Agreements, and acknowledges receipt of this General Information, including the General Terms and Conditions under which Qwest offers such ROW/Poles/Innerduct. The CLEC acknowledges the above costs are estimates only and CLEC may be financially responsible for final actual costs which exceed this estimate, or receive credit if requested.

	Qwest Corporation
Signature	Signature
	JOHN CARVETH
Name Typed or Printed	Name Typed or Printed
	PRODUCT MANAGER
Title	Title
Date	Date

A copy of this form signed form should be sent to:

\_\_\_\_\_  
\_\_\_\_\_**John Carveth, Qwest Structure Product Manager, Suite 2330, 1801 California, Denver, CO  
80202**

The original signed form should be sent with a check for the verification amount to:

**Pam Fisher, Qwest CLEC Joint Use, 6912 S Quentin, Suite 101, Englewood, CO 80112**

SCHEDULE A—PRICING CHART

INQUIRY, VERIFICATION, UNAUTHORIZED ATTACHMENT RATES BY STATE

Inquiry and Verification, Poles and Ducts

STATE	POLE/ROW INQUIRY per mile***	DUCT INQUIRY per mile***	POLE VERIFICATION per pole***	DUCT VERIFICATION per manhole***
<b>*** Qwest is currently recalculating costs for all states. Figures for all states will be provided when they are available.</b>				
AZ	\$ _____	\$ _____	\$ _____	\$ _____
CO	\$ _____	\$ _____	\$ _____	\$ _____
ID	\$ _____	\$ _____	\$ _____	\$ _____
IA	\$ _____	\$ _____	\$ _____	\$ _____
MN	\$ _____	\$ _____	\$ _____	\$ _____
MT	\$ _____	\$ _____	\$ _____	\$ _____
NE	\$ _____	\$ _____	\$ _____	\$ _____
NM	\$ _____	\$ _____	\$ _____	\$ _____
ND	\$ _____	\$ _____	\$ _____	\$ _____
OR*	\$ _____	\$ _____	\$ _____	\$ _____
SD	\$ _____	\$ _____	\$ _____	\$ _____
UT	\$ _____	\$ _____	\$ _____	\$ _____
WA*	\$ _____	\$ _____	\$ _____	\$ _____
WY	\$ _____	\$ _____	\$ _____	\$ _____ POLE
	DUCT	POLE	DUCT	POLE
	INQUIRY**	INQUIRY	VERIFICATION	VERIFICATION
	per mile	per mile	per pole	per manhole
AZ	\$ 326.04	\$ 391.91	\$ 36.21	\$ 470.74
CO	\$ 366.42	\$ 440.45	\$ 40.70	\$ 529.04
ID	\$ 323.69	\$ 389.09	\$ 35.95	\$ 467.35
IA	\$ 346.86	\$ 416.94	\$ 38.52	\$ 500.80

MN	\$ 343.05	\$ 412.36	\$ 38.10	\$ 495.30
MT	\$ 328.81	\$ 395.24	\$ 36.52	\$ 474.74
NE	\$ 340.10	\$ 408.81	\$ 37.77	\$ 491.03
NM	\$ 337.43	\$ 405.60	\$ 37.48	\$ 487.18
ND	\$ 316.08	\$ 379.94	\$ 35.10	\$ 456.36
OR*	\$ 317.43	\$ 381.54	\$ 35.26	\$ 458.26
SD	\$ 334.10	\$ 401.60	\$ 37.11	\$ 482.37
UT	\$ 354.72	\$ 426.39	\$ 39.40	\$ 512.15
WA*	\$ 290.03	\$ 348.63	\$ 32.21	\$ 418.75
WY	\$ 330.87	\$ 397.72	\$ 36.75	\$ 477.71

\* ordered rates by the state commission. \_\_\_\_\_

\*\* Rates for Right of Way (ROW) are under development

### **Unauthorized Attachments**

Oregon: Sanctions for unauthorized attachments will comply with House Rule 860.

Utah, Idaho, Washington: Unauthorized attachment charges will be \$200.00 per pole or innerduct segment between manholes.

All other states: Unauthorized attachment charges will be according to Section 9.1 of Attachment 3 or section 10.8.2.22 of the SGAT.

SCHEDULE B—Access Rates

RATES BY STATE

<u>STATE</u>	<u>POLE</u>	<u>DUCT</u>
	<u>per pole, per foot</u>	<u>per foot</u>
	<u>per year</u>	<u>per year</u>
AZ	\$4.29	\$ 0.36
CO	\$2.49	\$ 0.30
ID	\$3.56	\$ 0.25
IA	\$2.77	\$ 0.19
MN	\$2.12	\$ 0.22
MT	\$2.62	\$ 0.32
NE	\$2.73	\$ 0.28
NM	\$3.06	\$ 0.33
ND	\$6.01	\$ 0.33
OR*	\$4.36	\$ 0.44
SD	\$4.09	\$ 0.28
UT	\$2.46	\$0.33
WA*	\$2.98	\$ 0.38
WY	\$0.74	\$ 0.27

\* ordered rates by the state commission.

\*\* Utah Law governs Pole attachment and Conduit Rates. At present (7/26/00) Qwest has tariffed Pole attachment rates for cable companies which is also available for telecommunication carriers through 2/8/01. No conduit rate has been established by the Utah PUC-- the rate shown here is determined by the FCC formula.

**ATTACHMENT 2**

**Poles/Innerduct Order**

General Agreement No \_\_\_\_\_  
 BAN Number: \_\_\_\_\_

**\*\*NOTE: THIS FORM WILL BE COMPLETED BY QWEST AND SENT TO CLEC FOR SIGNATURE\*\***

Make-ready Work required: Yes ( ) No ( ) Date Received: \_\_\_\_\_

If Yes is checked, estimated Make-ready costs: \$ \_\_\_\_\_

Note: ~~Make-Ready charges do not include construction work to enhance infrastructure~~

The following Attachments are hereby incorporated by reference into this Order:

1. Term - Effective Date - \_\_\_\_\_.
2. Summary of Field Results (including Make-Ready work if required).
3. When placing fiber, CLEC must:

- a. provide Qwest representative, a final design ~~showing of~~ splice, racking and slack locations in Qwest utility holes.
- b. tag all equipment located in/on Qwest's facilities from beginning of the route to the end, and at the entrance and exit of each utility hole with the following information: (1) CLEC's Name and Contact Number, (2) Contract Number and Date of Contract, (3) Number of Fibers in the Innerduct and Color of Occupied Innerduct.

Annual Recurring Charges for this Permit:

	Annual Charge	Quantity	Total Annual Charge
1. Pole Attachment, Per Pole	\$ _____ /	_____	\$ _____
2. Innerduct Occupancy, Per Foot	\$ _____	_____	\$ _____
Total Annual Recurring Charges			\$ _____

For Poles, quantity is based on the number of vertical feet used (One cable attachment = one foot). If you choose ~~do not~~ place an order at this time, these Poles/Innerduct will be assigned on a first come-first served basis.

Additional Comments: THE ESTIMATED COSTS ARE FOR THE INSTALLATION OF INNERDUCT OR REARRANGEMENT PER THE WORK SHEETS. THE ANNUAL RECURRING CHARGE FOR YEAR 2000 HAS BEEN PRORATED TO \_\_\_\_\_ ( /DAY \* DAYS). PLEASE PROVIDE PAYMENT FOR THE MAKE-READY COSTS AND THE PRORATED 2000 RECURRING FEE ALONG WITH THIS SIGNED ORDER \_\_\_\_\_

By signing below and providing payment of the Make-ready costs and the first year's prorated Annual Recurring Charge (or, if CLEC requests Semiannual billing, then the first half-year's prorated Semiannual Recurring Charge), the CLEC desires Qwest to proceed with the Make-ready Work identified herein and acknowledges receipt of the General Terms and Conditions under which Qwest offers such Poles/Innerduct. By signing this document you are agreeing to the access described herein.

Return this signed form and check to: Pam Fisher, **Qwest CLEC Joint Use, Suite 101, 6912 S. Quentin, Englewood, CO 80112**

**80112.** Send a copy to: John Carveth, **Structure Product Manager, Suite 2330, 1801 California, Denver, CO 80202**

Qwest Field Engineer: \_\_\_\_\_

Phone Number: \_\_\_\_\_

	Qwest Corporation

Signature		Signature
		JOHN CARVETH
Name Typed or Printed		Name Typed or Printed
		PRODUCT MANAGER
Title		Title
Date		Date

## ATTACHMENT 3

General Agreement No. \_\_\_\_\_ Agreement: \_\_\_\_\_

### QWEST RIGHT OF WAY ACCESS, POLE ATTACHMENT AND/OR INNERDUCT OCCUPANCY GENERAL TERMS AND CONDITIONS

This is an Agreement between \_\_\_\_\_ ("CLEC") and Qwest Corporation ("Qwest"), for one or more Orders for the CLEC to obtain access to Qwest's Right-of-Way ("ROW") and/or to install/attach and maintain their communications facilities ("Facilities") to Qwest's Poles and/or placement of Facilities on or within Qwest's Innerduct (collectively "Poles/Innerduct") described in the General Information and CLEC Map, which are incorporated herein by this reference (singularly "Order" or collectively, "Orders"). If there is no other effective agreement (*i.e.*, an Interconnection Agreement) between CLEC and Qwest concerning access to Poles, Ducts and ROW, then this Agreement/Attachment 3 must be executed by both parties in order to start the Inquiry Review and in order for CLEC to obtain access to Poles, Ducts and/or ROW.

#### 1. SCOPE.

- 1.1 Subject to the provisions of this Agreement, Qwest agrees to issue to CLEC for any lawful telecommunications purpose, (a) one or more nonexclusive, revocable Orders authorizing CLEC to attach, maintain, rearrange, transfer, and remove at its sole expense its Facilities on Poles/Innerduct owned or controlled by Qwest, and/or (b) access to Qwest's ROW to the extent that (i) such ROW exists, and (ii) Qwest has the right to grant access to the CLEC. Any and all rights granted to CLEC shall be subject to and subordinate to any future local, state and/or federal requirements, and in the case of ROW, to the original document granting the ROW to Qwest or its predecessors.
- 1.2 Except as expressly provided herein, nothing in this Agreement shall be construed to require or compel Qwest to construct, install, modify, or place any Poles/Innerduct or other facility for use by CLEC or to obtain any ROW for CLEC's use.
- 1.3 Qwest agrees to provide access to ROW/Poles/Innerduct in accordance with the applicable local, state or federal law, rule, or regulation, incorporated herein by this reference, which governs this Agreement in the state in which Poles/Innerduct is provided.

2. **TERM.** Any Order issued under this Agreement for Pole attachments or Innerduct occupancy shall continue in effect for the term specified in the Order. Any access to ROW shall be non-exclusive and perpetual, subject to the terms and conditions of the Quitclaim Access Agreement (as hereinafter defined) and the original instrument granting the ROW to Qwest. This Agreement shall continue during such time CLEC is providing Poles/Innerduct attachments under any Order to this Agreement.

#### 3. TERMINATION WITHOUT CAUSE.

- 3.1 CLEC To the extent permitted by law, either party may terminate this Agreement (which will have the effect of terminating all Orders hereunder), or any individual Order(s) hereunder, without cause, by providing notice of such termination in writing and by certified Mail to the other party. The written notice for termination without cause shall be dated as of the day it is mailed and shall be effective no sooner than one hundred twenty (120) calendar days from the date of such notice.
- 3.2 Termination of this Agreement or any Order hereunder does not release either party from any liability under this Agreement that may have accrued or that arises out of any claim that may

have been accruing at the time of termination, including indemnity, warranties, and confidential information.

- 3.3 If Qwest terminates this Agreement for Cause, or if CLEC terminates this Agreement without Cause, CLEC shall pay termination charges equal to the amount of fees and charges remaining on the terminated Order(s) and shall remove its Facilities from the Poles/Innerduct within sixty (60) days, or cause Qwest to remove its Facilities from the Poles/Innerduct at CLEC's expense; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to Qwest until CLEC's Facilities are physically removed. Notwithstanding anything herein to the contrary, upon the termination of this Agreement for any reason whatsoever, all Orders hereunder shall simultaneously terminate.
- 3.4 If this Agreement or any Order is terminated for reasons other than Cause, then CLEC shall remove its Facilities from Poles/Innerduct within one hundred and eighty (180) days from the date of termination; provided, however, that CLEC shall be liable for and pay all fees and charges provided for in this Agreement to Qwest until CLEC's Facilities are physically removed.
- 3.5 Qwest may abandon or sell any Poles/Innerduct at any time by giving written notice to the CLEC. Upon abandonment of Poles/Innerduct, and with the concurrence of the other CLEC(s), if necessary, CLEC shall, within sixty (60) days of such notice, either apply for usage with the new owner or purchase the Poles/Innerduct from Qwest, or remove its Facilities therefrom. Failure to remove its Facilities within sixty (60) days shall be deemed an election to purchase the Poles/Innerduct at the current market value.

#### **4. CHARGES AND BILLING.**

- 4.1. CLEC agrees to pay Qwest Poles/Innerduct usage fees ("Fees") as specified in the Order. Fees will be computed in compliance with applicable local, state and Federal law, regulations and guidelines. Such Fees will be assessed, in advance on an annual basis. Annual Fees will be assessed as of January 1st of each year. Fees are not refundable except as expressly provided herein. CLEC shall pay all applicable Fees and charges specified herein within thirty (30) days from receipt of invoice. Any outstanding invoice will be subject to applicable finance charges.
- 4.2. Qwest has the right to revise Fees, at its sole discretion, upon written notice to CLEC within at least sixty (60) days prior to the end of any annual billing period.

#### **5. INSURANCE.** The CLEC shall obtain and maintain at its own cost and expense the following insurance during the life of the Contract:

- 5.1. Workers' Compensation and/or Longshoremen's and Harbor Workers Compensation insurance with (1) statutory limits of coverage for all employees as required by statute; and (2) although not required by statute, coverage for any employee on the job site; and (3) Stop Gap liability or employer's liability insurance with a limit of One Hundred Thousand Dollars (\$100,000.00) for each accident.
- 5.2 General liability insurance providing coverage for underground hazard coverage (commonly referred to as "U" coverage), products/completed operations, premises operations, independent contractor's protection (required if contractor subcontracts the work), broad form property damage and contractual liability with respect to liability assumed by the CLEC hereunder. This insurance shall also include: (1) explosion hazard coverage (commonly referred to as "X" coverage) if the work involves blasting and (2) collapse hazard coverage (commonly referred to as "C" coverage) if the work may cause structural damage due to excavation, burrowing, tunneling, caisson work, or under-pinning. The limits of liability for this coverage shall be not less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury or property damage. These limits of liability can be obtained through any combination of primary and excess or umbrella liability insurance.

- 5.3 Comprehensive automobile liability insurance covering the use and maintenance of owned, non-owned and hired vehicles. The limits of liability for this coverage shall be not less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury or property damage. These limits of liability can be obtained through any combination of primary and excess or umbrella liability insurance.
- 5.4 Qwest may require the CLEC from time-to-time during the life of the Contract to obtain additional insurance with coverage or limits in addition to those described above. However, the additional premium costs of any such additional insurance required by Qwest shall be borne by CLEC, Qwest, and the CLEC shall arrange to have such costs billed separately and directly to Qwest by the insuring carrier(s). Qwest shall be authorized by the CLEC to confer directly with the agent(s) of the insuring carrier(s) concerning the extent and limits of the CLEC's insurance coverage in order to assure the sufficiency thereof for purposes of the work performable under the Contract and to assure that such coverage as a whole with respect to the work performable are coordinated from the standpoint of adequate coverage at the least total premium costs.
- 5.5 The insuring carrier(s) and the form of the insurance policies shall be subject to approval by Qwest. The CLEC shall forward to Qwest, certificates of such insurance issued by the insuring carrier(s). The insuring carrier(s) may use the ACORD form, which is the Insurance Industries certificate of insurance form. The insurance certificates shall provide that: (1) Qwest is named as an additional insured; (2) thirty (30) calendar days prior written notice of cancellation of, or material change or exclusions in, the policy to which the certificates relate shall be given to Qwest; (3) certification that underground hazard coverage (commonly referred to as "U" coverage) is part of the coverage; and (4) the words "pertains to all operations and projects performed on behalf of the certificate holder" are included in the description portion of the certificate. The CLEC shall not commence work hereunder until the obligations of the CLEC with respect to insurance have been fulfilled. The fulfillment of such obligations shall not relieve the CLEC of any liability hereunder or in any way modify the CLEC's obligations to indemnify Qwest.
- 5.6 Whenever any work is performed requiring the excavation of soil or use of heavy machinery within fifty (50) feet of railroad tracks or upon railroad right-of-way, a Railroad Protective Liability Insurance policy will be required. Such policy shall be issued in the name of the Railroad with standard limits of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit for bodily injury, property damage or physical damage to property with an aggregate limit of Six Million Dollars (\$6,000,000.00). In addition, said policy shall name Qwest and the CLEC/SubCLEC on the declarations page with respect to its interest in these specific job. Said insurance policy shall be in form and substance satisfactory both to the Qwest and the Railroad and shall be delivered to and approved by both parties prior to the entry upon or use of the Railroad Property.
- 5.7 Whenever any work must be performed in the Colorado State Highway right-of-way, policies and certificates of insurance shall also name the State of Colorado as an additional insured. Like coverage shall be furnished by or on behalf of any subcontractor. Copies of said certificates must be available on site during the performance of the work.

## **6. CONSTRUCTION AND MAINTENANCE OF FACILITIES.**

- 6.1 Qwest retains the right, in its sole judgment, to determine the availability of space on Poles/Innerduct. When modifications to a Qwest spare conduit include the placement of innerduct, Qwest retains the right to install the number of innerducts required to occupy the

conduit structure to its full capacity. In the event Qwest determines that rearrangement of the existing facilities on Poles/Innerduct is required before CLEC's Facilities can be accommodated, the cost of such modification will be included in the CLEC's nonrecurring charges for the associated Poles/Innerduct Order.

- 6.2 CLEC shall be solely responsible for obtaining the necessary underlying legal authority to occupy Poles/Innerduct on governmental, federal, Native American, and private rights of way, as applicable, and Qwest does not warrant or represent that providing CLEC with access to the Poles/Innerduct in any way constitutes such legal right. The CLEC shall obtain any necessary permits, licenses, bonds, or other legal authority and permission, at the CLEC's sole expense, in order to perform its obligations under this Agreement. The CLEC shall contact all owners of public and private rights-of-way, as necessary, to obtain written permission required to perform the work prior to entering the property or starting any work thereon and shall provide Qwest with written documentation of such legal authority prior to placement of its facilities on or in the Poles/Innerduct. The CLEC shall comply with all conditions of rights-of-way and Orders.
- 6.3 CLEC's Facilities shall be placed and maintained in accordance with the requirements and specifications of the current applicable standards of Bellcore Manual of Construction Standards, the National Electrical Code, the National Electrical Safety Code, and the rules and regulations of the Occupational Safety and Health Act, all of which are incorporated herein by reference, and any governing authority having jurisdiction of the subject matter of this Agreement. Where a difference in specifications exists, the more stringent shall apply. Failure to maintain Facilities in accordance with the above requirements shall be Cause as referenced in Section 3 to this Agreement for termination of the Order in question. Termination of more than two (2) Orders in any twelve-month period pursuant to the foregoing sentence shall be Cause as referenced in Section 3 for termination of this Agreement. Qwest's procedures governing its standard maintenance practices shall be made available upon request for public inspection at the appropriate Qwest premises. CLEC's procedures governing its standards maintenance practices for Facilities shall be made available to Qwest upon written request. CLEC shall within thirty (30) days comply and provide the requested information to Qwest to bring their facilities into compliance with these terms and conditions.
- 6.4. In the event of any service outage affecting both Qwest and CLEC, repairs shall be effectuated on a priority basis as established by local, state or federal requirements, or where such requirement do not exists, repairs shall be made in the following order: electrical, telephone (local), telephone (long distance), and cable television, or as mutually agreed to by the users of the effected Poles/Innerduct.
- 6.5 In the event of an infrastructure outage, the CLEC should contact their Network Maintenance Center at 1-800-223-7881 or the CLEC may contact their Account Manager at the Interconnect Service Center.

## **7. MODIFICATION TO EXISTING POLES/INNERDUCT.**

- 7.1. If CLEC requests Qwest to replace or modify existing Poles/Innerduct to increase its strength or capacity for the benefit of the CLEC and Qwest determines in its sole discretion to provide the requested capacity, the CLEC shall pay Qwest the total replacement cost, Qwest's cost to transfer its attachments, as necessary, and the cost for removal (including destruction fees) of any replaced Poles/Innerduct, if such is necessary. Ownership of new Poles/Innerduct shall vest in Qwest. To the extent that a modification is incurred for the benefit of multiple parties, CLEC shall pay a proportionate share of the total cost as outlined above, based on the ratio of the amount of new space occupied by the Facilities to the total amount of space occupied by all parties joining the modification. Modifications that occur in order to bring Poles/Innerduct into compliance with applicable safety or other requirements shall be deemed to be for the benefit of the multiple parties and CLEC shall be responsible for its pro rata share of the modification cost.

Except as set forth herein, CLEC shall have no obligation to pay any of the cost of replacement or modification of Poles/Innerduct requested solely by third parties.

7.2 Written notification of modification initiated by or on behalf of Qwest shall be provided to CLEC at least sixty (60) days prior to beginning modifications if such modifications are not the result of an emergency situation. Such notification shall include a brief description of the nature and scope of the modification. If CLEC does not rearrange its facilities within sixty (60) days after receipt of written notice from Qwest requesting such rearrangement, Qwest may perform or cause to have performed such rearrangement and CLEC shall pay for cost thereof. No such notice shall be required in emergency situations or for routine maintenance of Poles/Innerduct.

**8. INSPECTION OF FACILITIES.** Qwest reserves the right to make final construction, subsequent and periodic inspections of CLEC's facilities occupying the Poles/Innerduct system. CLEC shall reimburse Qwest for the cost of such inspections except as specified in Section 8 hereof.

8.1. CLEC shall provide written notice to Qwest, at least fifteen (15) days in advance, of the locations where CLEC's plant is to be constructed.

8.2. The CLEC shall forward Exhibit A, entitled "Pulling In Report" attached hereto and incorporated herein by this reference, to Qwest within five (5) business days of the date(s) of the occupancy.

8.3. Qwest shall provide written notification to CLEC within seven (7) days of the date of completion of a final construction inspection.

8.4. Where final construction inspection by Qwest has been completed, CLEC shall be obligated to correct non-complying conditions within thirty (30) days of receiving written notice from Qwest. In the event the corrections are not completed within the thirty (30)-day period, occupancy authorization for the Poles/Innerduct system where non-complying conditions remain uncorrected shall terminate immediately, regardless of whether CLEC has energized the facilities occupying said Poles/Innerduct system, unless Qwest has provided CLEC a written extension to comply. CLEC shall remove its facilities from said Poles/Innerduct in accordance with the provisions set forth in Section 10 of this Agreement. No further occupancy authorization shall be issued to CLEC until such non-complying conditions are corrected or until CLEC's facilities are removed from the Pole/Conduit system where such non-complying conditions exist. If agreed to in writing, by both parties, Qwest shall perform such corrections and CLEC shall pay Qwest the cost of performing such work. Subsequent inspections to determine if appropriate corrective action has been taken may be made by Qwest.

8.5. Once the CLECs facilities occupy Qwest Poles/Innerduct system and Exhibit A has been received by Qwest, Qwest may perform periodic inspections. The cost of such inspections shall be borne by Qwest, unless the inspection reveals any violations, hazards, or conditions indicating that CLEC has failed to comply with the provisions set forth in this Agreement, in which case the CLEC shall reimburse Qwest for full costs of inspection, and re-inspection to determine compliance as required. A CLEC representative may accompany Qwest on field inspections scheduled specifically for the purpose of inspecting CLEC's Facilities; however, CLEC's costs associated with its participation in such inspections shall be borne by CLEC. Qwest shall have no obligation to notify CLEC, and CLEC shall have no right to attend, any routine field inspections.

8.6. The costs of inspections made during construction and/or the final construction survey and subsequent inspection shall be billed to the CLEC within thirty (30) days upon completion of the inspection.

8.7. Final construction, subsequent and periodic inspections or the failure to make such inspections, shall not impose any liability of any kind upon Qwest, and shall not relieve CLEC of any responsibilities, obligations, or liability arising under this Agreement.

## 9. UNAUTHORIZED FACILITIES

- 9.1 If any facilities are found attached to Poles/Innerduct for which no Order is in effect, USWQwest, without prejudice to any other rights or remedies under this Agreement, shall assess an unauthorized attachment administrative fee of Two Hundred Dollars (\$200.00) per attachment per Pole or innerduct run between manholes, and require the CLEC to submit in writing, within ten (10) day after receipt of written notification from USWQwest of the unauthorized occupancy, a Poles/Innerduct application. If such application is not received by USWQwest within the specified time period, the CLEC will be required to remove its unauthorized facility within ten (10) days of the final date for submitting the required application, USWQwest may remove the CLEC's facilities without liability, and the cost of such removal shall be borne by the CLEC.
- 9.2 For the purpose of determining the applicable charge, the unauthorized Poles/Innerduct occupancy shall be treated as having existed for a period of five (5) years prior to its discovery, and the charges, as specified in Section 4, shall be due and payable forthwith whether or not CLEC is ordered to continue the occupancy of the Poles/Innerduct system.
- 9.3. No act or failure to act by Qwest with regard to an unauthorized occupancy shall be deemed to constitute the authorization of the occupancy; any authorization that may be granted subsequently shall not operate retroactively or constitute a waiver by Qwest of any of its rights of privileges under this Agreement or otherwise.

**10. REMOVAL OF FACILITIES.** Should Qwest, under the provisions of this Agreement, remove CLEC's Facilities from the Poles/Innerduct covered by any Order (or otherwise), Qwest will deliver the Facilities removed upon payment by CLEC of the cost of removal, storage and delivery, and all other amounts due Qwest. If payment is not received by Qwest within thirty (30) days, CLEC will be deemed to have abandoned such facilities, and Qwest may dispose of said facilities as it determines to be appropriate. If Qwest must dispose of said facilities, such action will not relieve CLEC of any other financial responsibility associated with such removal as provided herein. If CLEC removes its Facilities from Poles/Innerduct for reasons other than repair or maintenance purposes, the CLEC shall have no right to replace such facilities on the Poles/Innerduct until such time as all outstanding charges due to Qwest for previous occupancy have been paid in full. CLEC shall submit Exhibit B, entitled "Notification of Surrender of Modification of Conduit Occupancy License by CLEC," or Exhibit C, entitled "Notification of Surrender of Modification of Pole Attachment by CLEC," each as attached hereto, advising Qwest as to the date on which the removal of Facilities from each Poles/Innerduct has been completed.

**11. INDEMNIFICATION AND LIMITATION OF LIABILITIES.** CLEC shall indemnify and hold harmless Qwest, its owners, parents, subsidiaries, affiliates, agents, directors, and employees against any and all liabilities, claims, judgments, losses, orders, awards, damages, costs, fines, penalties, costs of defense, and attorneys' fees ("Liabilities") to the extent they arise from or in connection with: (1) infringement, or alleged infringement, of any patent rights or claims caused, or alleged to have been caused, by the use of any apparatus, appliances, equipment, or parts thereof, furnished, installed or utilized by the CLEC; (2) actual or alleged fault or negligence of the CLEC, its officers, employees, agents, subcontractors and/or representatives; (3) furnishing, performance, or use of any material supplied by CLEC under this Contract or any product liability claims relating to any material supplied by CLEC under this Contract; (4) failure of CLEC, its officers, employees, agents, subcontractors and/or representatives to comply with any term of this Contract or any applicable local, state, or federal law or regulation, including but not limited to the OSH Act and environmental protection laws; (5) assertions under workers' compensation or similar employee benefit acts by CLEC or its employees, agents, subcontractors, or subcontractors' employees or agents; (6) the acts or omissions (other than the gross negligence or willful misconduct) of Qwest, its officers, employees, agents, and representatives, except as otherwise provided in paragraphs 11.3 and 11.4 below; and/or, (7) any economic damages that may rise, including damages for delay or other related economic damages that the Qwest or third parties may suffer or allegedly suffer as a result of the performance or failure to perform work by the CLEC. If both

Qwest and the CLEC are sued as a result of or in connection with the performance of work arising out of this Contract, the parties hereby agree that the defense of the case (including the costs of the defense and attorneys' fees) shall be the responsibility of the CLEC, if Qwest desires. Qwest shall give the CLEC reasonable written notice of all such claims and any suits alleging such claims and shall furnish upon the CLEC's request and at the CLEC's expense all information and assistance available to the Qwest for such defense. The parties shall employ Article 13, Dispute Resolution, to resolve any dispute concerning the proportional fault and liability after the underlying case is terminated.

- 11.1 IF WORK IS PERFORMED IN THE STATE OF WASHINGTON UNDER THIS GENERAL CONTRACT, THE CLEC ACKNOWLEDGES AND AGREES THAT THIS INDEMNIFICATION OBLIGATION SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL CLAIMS AGAINST QWEST BY AN EMPLOYEE OR FORMER EMPLOYEE OF THE CLEC, AND THE CLEC EXPRESSLY WAIVES ALL IMMUNITY AND LIMITATION ON LIABILITY UNDER ANY INDUSTRIAL INSURANCE ACT, OTHER WORKERS' COMPENSATION ACT, DISABILITY BENEFIT ACT, OR OTHER EMPLOYEE BENEFIT ACT OF ANY JURISDICTION WHICH WOULD OTHERWISE BE APPLICABLE IN THE CASE OF SUCH A CLAIM.
- 11.2 Except as expressly provided herein, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT; provided, however, there shall be no limitation on a party's liability to the other for any fines or penalties imposed on the other party by any court of competent jurisdiction or federal, state or local administrative agency resulting from the failure of the party to comply with any term or condition of this Contract or any valid and applicable law, rule or regulation.
- 11.3 FOR ANY WORK PERFORMED IN ARIZONA, IDAHO, SOUTH DAKOTA, UTAH OR WASHINGTON, SECTION 11(6) SHALL NOT EXTEND TO THE SOLE NEGLIGENCE OF QWEST BUT SHALL EXTEND TO THE NEGLIGENCE OF QWEST WHEN CONCURRENT WITH THAT OF THE CLEC.
- 11.4 FOR ANY WORK PERFORMED IN THE STATES OF MINNESOTA, NEBRASKA, NEW MEXICO, OR OREGON, ARTICLE 11 SHALL NOT APPLY, EXCEPT THAT SECTION 11 SHALL APPLY FOR WORK PERFORMED IN MINNESOTA FOR MAINTENANCE OR REPAIR OF MACHINERY, EQUIPMENT, OR OTHER SUCH DEVICES, USED AS PART OF A MANUFACTURING, COVERING, OR OTHER PRODUCTION PROCESS INDULGING ELECTRIC, GAS, STEAM, AND TELEPHONE UTILITY EQUIPMENT USED FOR PRODUCTION, TRANSMISSION, OR DISTRIBUTION PURPOSES.

## 12. **FORCE MAJEURE**

- 12.1 The CLEC shall be excused from its performance as to any Order if prevented by acts or events beyond the CLEC's reasonable control including extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities.
- 12.2 If such contingency occurs, Qwest may elect:
  - 12.2.1 To terminate this Agreement as to the Order in question; or
  - 12.2.2 To terminate already-assigned specific work assignment(s) the CLEC is unable to perform, or any part thereof, and to assign new specific work assignments to other parties for the duration of the cause of the delay; or

12.2.3 To suspend already-assigned specific work assignment(s) the CLEC is unable to perform, or any part thereof, for the duration of the cause of the delay; and to assign new specific work assignments to other parties for the duration of the cause of the delay.

12.3 Qwest shall be deemed to have elected Section 12.2.3 above unless written notice of termination is given by Qwest after the contingency occurs. With respect to Qwest's election of Section 12.2.3 above:

12.3.1 Qwest shall give the CLEC written notice of the work to be performed by such other party prior to its performance and shall deduct from the CLEC's price the cost of the work or services actually performed by such other parties.

12.3.2 The CLEC shall resume performance, and complete any work not performed or to be performed by another party, once the delaying cause ceases.

12.3.3 If appropriate, at the Qwest's discretion, the time for completion of specific work assignment(s) shall be extended up to the length of time the contingency endured.

12.4 Qwest shall be excused from its performance if prevented by acts or events beyond the Qwest's reasonable control including extreme weather conditions, strikes, fires, embargoes, actions of civil or military law enforcement authorities, acts of God, or acts of legislative, judicial, executive, or administrative authorities.

### 13. **DISPUTE RESOLUTION.**

13.1. Other than those claims over which a regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA") unless otherwise provided herein. The arbitrator shall be selected in accordance with AAA procedures from a list of qualified people maintained by AAA. The arbitration shall be conducted in the regional AAA office closest to where the claim arose.

13.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

13.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

13.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

14. **LAWFULNESS.** This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. Any change in rates, charges or regulations mandated by the legally constituted authorities will act as a modification of any contract to that extent without further notice. This Agreement shall be governed by the laws of the state where Poles/Innerduct is provided. Nothing contained herein shall substitute for or be deemed a waiver of the parties' respective rights and obligations under applicable federal, state and local laws, regulations and guidelines, including (without limitation) Section 224 of the

Communications Act of 1934, as amended (47 U.S.C. 224). The CLEC represents that it is a certified Competitive Local Exchange Carrier or otherwise has the legal right, pursuant to 47 U.S.C. 224 to attach to Qwest's pole pursuant to the terms thereof. The CLEC acknowledges that Qwest will rely on the foregoing representation, and that if such representation is not accurate, this Agreement shall be deemed void *ab initio*, except for Article 9 hereof, for which CLEC shall remain fully liable.

- 15. **SEVERABILITY.** In the event that a court, governmental agency, or regulatory agency with proper jurisdiction determines that this Agreement or a provision of this Agreement is unlawful, this Agreement, or that provision of the Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is terminated but the parties can legally, commercially and practicably continue without the terminated provision, the remainder of this Agreement shall continue in effect.
- 16. **GENERAL PROVISIONS.**
  - 16.1 Failure or delay by either party to exercise any right, power, or privilege hereunder, shall not operate as a waiver hereto.
  - 16.2 This Agreement shall not be assignable by CLEC without the express written consent of Qwest, which shall not be unreasonably withheld. Assignment of this Agreement by CLEC to CLEC's subsidiary or affiliate shall be presumed to be reasonable; provided, however, that CLEC must obtain Qwest's consent in any event.
  - 16.3 This Agreement benefits CLEC and Qwest. There are no third party beneficiaries.
  - 16.4 This Agreement constitutes the entire understanding between CLEC and Qwest with respect to Service provided herein and supersedes any prior agreements or understandings.

The parties hereby execute and authorize this Agreement as of the latest date shown below:

<p>CLEC</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Name Typed or Printed</p> <p>_____</p> <p>Title</p> <p>_____</p> <p>Date</p>	<p>Qwest Corporation</p> <p>_____</p> <p>Signature</p> <p>JOHN CARVETH</p> <p>_____</p> <p>Name Typed or Printed</p> <p>PRODUCT MANAGER</p> <p>_____</p> <p>Title</p> <p>_____</p> <p>Date</p>
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<p>Address for Notices</p>   <p>Contact: Phone: FAX:</p>	<p>Address for Notices</p> <p>Qwest Corporation 1801 California, Rm. 2330 Denver, CO 80202</p> <p>Contact: JOHN CARVETH Phone: 303-896-0789 FAX: 303-896-9022</p>
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PULLING IN REPORT

20

Qwest Corporation

This report is to be completed by the CLEC when fiber cable is placed into innerduct.

20

Send to:

E. Skinner, Qwest Corp  
6912 S. Quentin St, Suite 201  
Englewood, CO 80112

This is to advise you that pursuant to General Agreement No. \_\_\_\_\_ granted to us under the terms of the Innerduct Agreement dated \_\_\_\_\_, 20\_\_ we have completed installation of the following cable into the following ducts.

Municipality

Location		Cable and Equipment Installed	Date
From Manhole at	To Manhole at		

Name of CLEC

By:

By:

Title:

Receipt of the above report is hereby acknowledged \_\_\_\_\_, 20\_\_.

Qwest Corporation

By:

By:

Title:

1. Reports shall be submitted in duplicate.
2. A complete description of all facilities shall be given, including a print showing the locations, quantities, sizes and types of all cables and equipment.
3. Sketch to be furnished showing duct used. Must be same duct assigned to Licensee by Licensor as shown on Exhibit \_\_\_\_, unless a change has been previously authorized in writing by Licensor.



Discontinued: \_\_\_\_\_ Total duct footage \_\_\_\_\_

EXHIBIT C

\_\_\_\_\_  
 \_\_\_\_\_  
 CLEC

NOTIFICATION OF SURRENDER OR MODIFICATION  
 OF POLE ATTACHMENT ORDER BY CLEC

Street Address \_\_\_\_\_  
 City and State \_\_\_\_\_  
 Date \_\_\_\_\_

\_\_\_\_\_  
 Qwest Corporation CLEC: \_\_\_\_\_

Return to:  
 E. Skinner, Qwest Corp  
 6912 S. Quentin, Suite 201  
 Englewood, CO 80112

\_\_\_\_\_ In accordance with the terms and conditions of the Agreement between Qwest and CLEC, dated \_\_\_\_\_,  
 dated ,20\_\_ , notice is hereby given that the licenses covering attachments to the following poles  
 and/or anchors, and/or utilization of anchor/guy strand is surrendered (or modified as indicated in  
 CLEC's prior notification to Qwest,  
 dated \_\_\_\_\_, 20\_\_) effective \_\_\_\_\_.

	POLE NO.	ASSOC. POLE NO.	LIC. NO. & DATE	SURRENDER OR MODIFICATION	DATE FAC. RMVD OR MODIFIED
1.		A A/GS -			
2.		A A/GS -			
3.		A A/GS -			
4.		A A/GS -			
5.		A A/GS -			
6.		A A/GS -			
7.		A A/GS -			
8.		A A/GS -			
9.		A A/GS -			
<del>10.</del>		A A/GS -			
<del>11.</del>		A A/GS -			
<del>12.</del>		A A/GS -			

13.		A AGS-			
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Date Notification Received \_\_\_\_\_  
Date Modification Received \_\_\_\_\_  
By: \_\_\_\_\_

\_\_\_\_\_  
Name of CLEC

Discontinued: \_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_ Poles \_\_\_\_\_

\_\_\_\_\_ Anchors \_\_\_\_\_

\_\_\_\_\_ Anchor/Guy Strands \_\_\_\_\_ Its: \_\_\_\_\_

**SGAT EXHIBIT D**

By: \_\_\_\_\_

Poles \_\_\_\_\_

Anchors \_\_\_\_\_ Anchor/Guy Strands \_\_\_\_\_ Its: \_\_\_\_\_

\_\_\_\_\_

**SGAT EXHIBIT D**

**ATTACHMENT 4  
FORM OF QUITCLAIM RIGHT OF ACCESS AGREEMENT**

After recording, please return to:

~~Qwest Corporation  
1801 California Street  
Suite 2330  
Denver, Colorado 80202~~

~~Attention: Structure Project Manager E. Skinner  
Qwest Joint Use Group PDR, Suite 201  
6912 S Quentin, Englewood, CO 80112~~

**QUITCLAIM RIGHT OF ACCESS AGREEMENT**

~~THIS QUITCLAIM RIGHT OF ACCESS AGREEMENT (this "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2000, by and between QWEST CORPORATION, a Colorado corporation, successor in interest to U S WEST COMMUNICATIONS, INC., a Colorado corporation ("Grantor"), whose address is \_\_\_\_\_, and \_\_\_\_\_, a ("Grantee").~~

**RECITALS**

- A. This Agreement relates to certain real property (the "Property") located in the County of \_\_\_\_\_ (the "County"), State of \_\_\_\_\_ (the "State").
- B. A copy of an agreement purporting to grant to Grantor certain rights to use the Property, as described therein (the "Easement Rights"), is attached as Exhibit A (the "Right of Way Agreement").
- C. Pursuant to 42 U.S.C. §§ 224 and 251(b)(5), Grantor, as a Local Exchange Carrier, is required to provide access to rights-of-way to a requesting telecommunications carrier, as defined in 42 U.S.C. § 224. Grantee is a telecommunications carrier that has requested access to Grantor's Easement Rights. To comply with the aforementioned legal requirement, Grantor has agreed to share with Grantee its Easement Rights, if any, relating to the Property, to the extent Grantor may legally convey such an interest.
- D. Subject to the consent of the owner of the Property ("Owner") and on the other terms and conditions set forth in this Agreement, Grantor has agreed to quitclaim convey to Grantee, without any representation or warranty, the right to use the Easement Rights, and Grantee has agreed to accept such quitclaim conveyance.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

## SGAT EXHIBIT D

1. Grant of Right of Access. Grantor hereby ~~quitclaims~~conveys to Grantee and its Authorized Users (as defined below) a non-exclusive, perpetual right to access and use the Easement Rights, which right shall be expressly (a) subject to, subordinate to, and limited by the Right of Way Agreement, and (b) subject to the terms and conditions hereof. As used in this Agreement, "Authorized Users" of Owner, Grantor and Grantee shall mean Owner, Grantor or Grantee, as applicable, their respective Affiliates and agents, licensees, employees, and invitees, including, without limitation, contractors, subcontractors, consultants, suppliers, public emergency vehicles, shipping or delivery vehicles, or construction vehicles. "Affiliates" means, with respect to any Person, any Person that controls, is controlled by or is under common control with such Person, together with its and their respective members, partners, venturers, directors, officers, stockholders, agents, employees and spouses. A Person shall be presumed to have control when it possesses the power, directly or indirectly, to direct, or cause the direction of, the management or policies of another Person, whether through ownership of voting securities, by contract, or otherwise. "Person" means an individual, partnership, limited liability company, association, corporation or other entity.

2. Grantor's Reserved Rights. Grantor reserves to itself and its Authorized Users the right to use the Easement Rights for any purpose not incompatible with the rights ~~quitclaimed~~conveyed to Grantee by this Agreement.

3. Conditions Precedent to Effectiveness of Agreement. This Agreement is expressly conditioned on the following:

b.a. Consent by Owner. Grantee shall obtain, at its sole cost and expense, a written consent from Owner in the form attached (the "Consent"). The Consent provides, among other things, that Owner shall give notice to Grantor of any default under the Right of Way Agreement and the opportunity to cure such default.

b. Recordation of Agreement. **If the Right-of-Way Agreement has been publicly recorded,** Grantee shall be responsible for assuring that the Agreement is in appropriate form for recording in the real property records of the County, shall pay for the recording thereof, and shall provide a copy of the recorded Agreement to Grantor at the address set forth above. An executed and acknowledged Consent and a legible copy of the Right of Way Agreement must be attached to the Agreement when recorded or the Agreement shall not be effective.

c. Payment of Costs and Expenses. Grantee shall pay to or reimburse Grantor for all costs and expenses, including reasonable attorneys' fees, relating to Grantor's execution and delivery of this Agreement.

4. Grantee's Representations and Warranties. Grantee represents and warrants to Grantor that:

a. Authority. Grantee is a \_\_\_\_\_, duly formed and validly existing under the laws of the State of \_\_\_\_\_. All necessary action has been taken by Grantee to execute and deliver this Agreement and to perform the obligations set forth hereunder. Grantee is a "telecommunications carrier" as that term is defined in 42 U.S.C. § 224.

b. Due Diligence. Grantee acknowledges and agrees that neither Grantor nor any agent, employee, attorney, or representative of Grantor has made any statements, agreements, promises, assurances, representations, or warranties, whether in this Agreement or otherwise and whether express or implied, regarding the Right of Way Agreement or the Easement Rights or the assignability or further granting thereof, or title to or the environmental or other condition of the Property. Grantee further acknowledges and agrees that Grantee has examined and investigated to its full satisfaction the physical nature and condition of the Property and the Easement Rights and that it

## SGAT EXHIBIT D

is acquiring the Easement Rights in an "AS IS, WHERE IS" condition. Grantee expressly waives all claims for damages by reason of any statement, representation, warranty, assurance, promise or agreement made, if any.

### 5. Grantee's Covenants.

a-Compliance with Right of Way Agreement. Grantee agrees that the rights granted by Grantor hereunder are expressly subject to, subordinate to, and limited by the Right of Way Agreement, and Grantee further agrees to comply in all respects with the terms and conditions of the Right of Way Agreement as they apply to the holder or user of the Easement ~~Rights~~.

a. Rights. In the event Grantee fails to observe or perform any of its obligations under the Right of Way Agreement, Grantor shall have the right, but not the obligation, to perform or observe such obligation to the extent that such obligation can be observed or performed by Grantor.

b. Compliance with Laws. Grantee agrees to use the Property and the Easement Rights in compliance with all applicable laws.

c. No Further Grant. Grantee shall not grant to any Person other than Grantee's Authorized Users the right to use the Easement Rights without the prior written consent of Grantor, which consent may be granted or withheld in Grantor's sole discretion.

d. Non-Interference. Grantee agrees that it will not interfere with Grantor's or Grantor's Authorized Users' use of the Easement Rights and will not take any action or fail to take any action that would negatively affect the Easement Rights or cause or contribute to the termination of the Right of Way Agreement.

6. Indemnification. Grantee hereby agrees to indemnify, defend and hold Owner, Grantor and their respective Affiliates harmless from and against any and all claims, judgments, damages, liabilities, penalties, fines, suits, causes of action, costs of settlement, and expenses (including, without limitation, reasonable attorneys' fees) which may be imposed upon or incurred by Grantor or its Authorized Users, or any of them, arising from, relating to or caused by Grantee's breach of this Agreement or the use, or the use by any of Grantee's Authorized Users, of the Easement Rights. In addition to the indemnity obligations described above, in the event that any act or omission of Grantee or Grantee's Authorized Users causes, directly or indirectly, and without reference to any act or omission of Owner, Grantor or their respective Authorized users, the termination or revocation of the Easement Rights, Grantee shall be liable to Grantor for all costs incurred in connection with (a) acquiring replacement Easement Rights over the Property or over other suitable Property, as determined in Grantor's sole judgment (the "Replacement Easement"), (b) the fully-loaded cost of constructing replacement facilities over the Replacement Easement, (c) the cost of removing its facilities and personal property from the Property, if required by the Right of Way Agreement, and (d) any other costs of complying with the Right of Way Agreement, including, without limitation, reasonable attorneys' fees. Grantee shall pay all such amounts within ten (10) days of receipt of any invoice for such costs delivered to Grantee by Owner, Grantor or their respective Authorized Users.

7. Condemnation. If any action is taken whereby the Right of Way Agreement or any part of the Easement Rights are terminated, relocated or otherwise affected, by any taking or partial taking by a governmental authority or otherwise, then such any compensation due or to be paid to the holder of the Easement Rights due to such occurrence shall belong solely to Grantor.

## SGAT EXHIBIT D

8. Severable Provisions. If any term of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9. Default; Remedies. (a) If Grantee files a petition in bankruptcy, or a petition in bankruptcy is filed against Grantee, which is not dismissed on or before fifteen (15) days after such filing, or (b) in the event of Grantee's breach or threatened breach of any term, covenant or condition of this Agreement, then Grantor shall have, in addition to all other legal and equitable remedies, the right to (x) terminate this Agreement, (y) enforce the provisions hereof by the equitable remedy of specific performance, or (z) enjoin such breach or threatened breach by injunctive action, all without the necessity of proof of actual damages or inadequacy of any legal remedy. Grantee agrees to pay all costs of enforcement of the obligations of Grantee hereunder, including reasonable attorneys' fees and all costs of suit, in case it becomes necessary for Grantor to enforce the obligations of Grantee hereunder, whether suit be brought or not, and whether through courts of original jurisdiction, as well as in courts of appellate jurisdiction, or through a bankruptcy court or other legal proceedings.

10. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be assigned at any time in whole or in part by Grantor.

11. No Dedication. Nothing contained in this Agreement shall constitute a gift or dedication of any portion of the Easement Rights to the general public or for any public purpose whatsoever. There are no intended third-party beneficiaries to this Agreement.

12. Grantor's Waiver of Confidentiality. In the event that Owner properly executes the Consent, Grantor hereby waives any right to keep the terms and conditions of the Right of Way Agreement confidential, except for any dollar amounts in the Right of Way Agreement, which rights Grantor expressly reserves. Grantor's waiver of rights, subject to the limitation set forth above, is intended to be effective whether or not such right to confidentiality is expressly set forth in the Right of Way Agreement or elsewhere or may have been agreed to orally, and Grantor further covenants not to assert any claim or commence any action, lawsuit, or other legal proceeding against Owner or Grantee, based upon or arising out of Grantor's alleged right to confidentiality relating to the Right of Way Agreement, except in the event of disclosure of dollar amounts in the Right of Way Agreement. Grantor's waiver is expressly conditioned on Owner's waiver of Owner's confidentiality rights, as set forth in the Consent, which is a part hereof. In the event that Owner does not waive its rights to confidentiality by executing the Consent in the form attached hereto, or if the person executing the Consent does not have the legal right to bind the Owner, Grantor reserves the right (a) to enforce the confidentiality provisions of the Right of Way Agreement, and/or (b) to maintain an action for damages, including, without limitation, consequential damages, arising from the breach of such confidentiality provisions, against any party, including, without limitation, against Grantee or against any Person improperly executing the Consent. In any event, Grantor reserves its right to (a) to enforce the confidentiality provisions of the Right of Way Agreement as to any dollar amounts set forth in such Right of Way Agreements, and/or (b) to maintain an action for damages, including, without limitation, consequential damages, arising from the disclosure of the dollar amounts in any Right of Way Agreement, against any party, including, without limitation, against Grantee or against any Person improperly executing the Consent.

13. Notices. All notices to be given pursuant to this Agreement shall be deemed delivered (a) when personally delivered, or (b) three (3) business days after being mailed postage prepaid, by United States certified mail, return receipt requested, or (c) one business day after being timely delivered to an overnight express courier service such as Federal Express which provides for the equivalent of a return receipt to the



**SGAT EXHIBIT D**

**EXECUTED** as of the date first written above.

**GRANTEE:**

Witnessed by: \_\_\_\_\_, a \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

STATE OF \_\_\_\_\_ )

) ss:

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2000,  
by \_\_\_\_\_ as \_\_\_\_\_ of  
\_\_\_\_\_, a \_\_\_\_\_.

Witness my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**SGAT EXHIBIT D**

**CONSENT TO QUIT CLAIM RIGHT OF REGARDING ACCESS AGREEMENT**

**THE UNDERSIGNED**, \_\_\_\_\_, a \_\_\_\_\_ (“Owner”), whose address is \_\_\_\_\_, hereby consents to the terms of the following paragraphs regarding the foregoing ~~Quitclaim Right of~~ Access Agreement (the “~~Agreement~~”), ~~as required therein.~~ “Agreement”). This Consent is attached to and made a part of the Agreement, and capitalized terms used in this Consent, if not otherwise defined, have the same meaning as in the Agreement.

**FOR TEN DOLLARS (\$10)** and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner agrees as follows:

~~1. Consent. Owner hereby consents to the terms and provisions of the foregoing Agreement between Grantor and Grantee.~~

~~2. Title to Property.~~ Owner represents and warrants either (a) that Owner is the owner of fee title to the Property described in the Right of Way Agreement attached to the Agreement as Exhibit A or, if no description of the Property is given in the Right of Way Agreement, then (b) that Owner is the grantor, or the successor to or assignee of the grantor, of the Easement Rights under the Right of Way Agreement. Owner further represents and warrants that Owner has the legal right to execute this Consent, including, without limitation, the right to waive the confidentiality of the Right of Way Agreement as set forth in Section 43 of this Consent and the right to bind Owner to grant the notice and cure period as set forth in Section 54 of this Consent.

~~3.2. Owner’s Acknowledgments.~~ Owner expressly acknowledges that (a) Owner has received and reviewed a copy of the foregoing Agreement; (b) this is a legal document that may affect Owner’s rights and Owner was given the opportunity to have the Agreement and this Consent reviewed by Owner’s attorney; (c) if the Agreement has been publicly recorded, the Agreement, with this Consent attached, will be recorded in the real property records of the County and will become a public record, and Owner, by signing this Consent, waives any rights it may to keep the terms and provisions of the Agreement and the Right of Way Agreement confidential; and (d) Owner understands that it is neither illegal nor a violation of the Right of Way Agreement with Grantor for Owner to enter into a right-of-way agreement, including the Agreement, with a telecommunications carrier, as defined in 4247 U.S.C. § 224, such as Grantee.

~~4.3. Owner’s Waiver of Confidentiality.~~ Owner hereby waives any right it may have to keep the terms and conditions of the Agreement and/or the Right of Way Agreement confidential, whether or not such right to confidentiality is expressly set forth in the Agreement, the Right of Way Agreement or elsewhere or may have been agreed to orally, and Owner further covenants not to assert any claim or commence any action, lawsuit, or other legal proceeding against Grantor or Grantee, based upon or arising out of Owner’s alleged right to confidentiality relating to the Agreement or the Right of Way Agreement. **Owner understands that Qwest does not agree to waive the confidentiality of the dollar amounts set forth in any Right of Way Agreement, and acknowledges that Owner has no right to provide copies of such Right of Way Agreements to any party unless Owner has completely deleted the dollar amounts.**

~~5.4. Notice and Cure Period.~~ Notwithstanding anything to the contrary contained in the Right of Way Agreement, Owner shall not commence any action or otherwise pursue any right or remedy under, or take any steps to terminate, the Right of Way Agreement due to a default by Grantee under the terms and provisions of the Right of Way Agreement unless written notice by Owner specifying such default is given to Grantor and Grantee. Owner agrees that Grantor shall have the right, but shall not be obligated, to cure such



**SGAT EXHIBIT D**  
**CONSENT TO DISCLOSURE**

**THE UNDERSIGNED**, \_\_\_\_\_, a \_\_\_\_\_ (“Owner”),  
whose address is \_\_\_\_\_, hereby consents  
to the terms of the following paragraphs regarding the attached MDU Agreement (the “Agreement”).

**FOR TEN DOLLARS (\$10)** and other good and valuable consideration, the receipt and sufficiency  
of which are hereby acknowledged, Owner agrees as follows:

1. Title to Property. Owner represents and warrants either (a) that Owner is the owner of fee title to the Property described in the Agreement attached hereto or, if no description of the Property is given in the Agreement, then (b) that Owner is the grantor, or the successor to or assignee of the grantor, of the Easement Rights, if any, under the Agreement. Owner further represents and warrants that Owner has the legal right to execute this Consent, including, without limitation, the right to waive the confidentiality of the Agreement as set forth in Section 3 of this Consent.

2. Owner’s Acknowledgments. Owner expressly acknowledges that (a) this is a legal document that may affect Owner’s rights and Owner was given the opportunity to have the Agreement and this Consent reviewed by Owner’s attorney; and (b) Owner, by signing this Consent, waives any rights it may have to keep the terms and provisions of the Agreement confidential.

3. Owner’s Waiver of Confidentiality. Owner hereby waives any right it may have to keep the terms and conditions of the Agreement confidential, whether or not such right to confidentiality is expressly set forth in the Agreement or elsewhere or may have been agreed to orally, and Owner further covenants not to assert any claim or commence any action, lawsuit, or other legal proceeding against Grantor or Grantee, based upon or arising out of Owner’s alleged right to confidentiality relating to the Agreement. **Owner understands that Qwest does not agree to waive the confidentiality of the dollar amounts set forth in any Agreement, and acknowledges that Owner has no right to provide copies of such Agreements to any party unless Owner has completely deleted the dollar amounts.**

4. Notices. All notices to be given pursuant to this Agreement shall be deemed delivered (a) when personally delivered, or (b) three (3) business days after being mailed postage prepaid, by United States certified mail, return receipt requested, or (c) one business day after being timely delivered to an overnight express courier service such as Federal Express which provides for the equivalent of a return receipt to the sender, to the above described addresses of the parties hereto, or to such other address as a party may request in a writing complying with the provisions of this Section.

**EXECUTED** as of the date first written above.

**OWNER:**

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**SGAT EXHIBIT D**

**EXHIBIT 1**

**Right of Way Agreement**

(This represents the ROW agreement between the Co-Provider and the property owner)



Page 1

1) BEFORE THE PUBLIC UTILITIES COMMISSION  
2) OF THE STATE OF COLORADO  
3) Docket' No. 97I-198T

-----  
IN THE MATTER OF THE INVESTIGATION INTO U S WEST  
5) COMMUNICATIONS, INC.'S COMPLIANCE WITH ° 271(C) OF THE  
TELECOMMUNICATIONS ACT OF 1996.  
6) -----

7)  
8) PURSUANT TO NOTICE to all parties of interest,  
9) the above-entitled matter came on for hearing at  
10) 9:00 p.m., on June 7, 2000, at 1560 Broadway, Suite 1075,  
11) Denver, Colorado, 80203, before Facilitators, Hagood  
12) Bellinger and Phil Doherty.

## APPEARANCES

17) For AT&T Communications LETTY S.D. FRIESEN, ESQ.  
of the Mountain States, Inc. REBECCA B. DeCOOK, ESQ.  
18) DOMINICK SEKICH, ESQ.  
1875 Lawrence Street, #1575  
Denver, Colorado 80202  
19) For WorldCom, Inc. THOMAS F. DIXON, ESQ.  
707 17th Street, #3600  
Denver, Colorado 80202-3400  
21) For NextLink, Rhythms, ROBERT W. NICHOLS, ESQ.  
Jato and Covad 2060 Broadway, #200  
Boulder, Colorado 80302  
24)  
25)

Page 2

## APPEARANCES (Continued)

1) For Sprint Communications ANDREW M. JONES  
Company, LLP Central Region  
8140 Ward Road Parkway  
Kansas City, Mo 64114  
4) For U S West STEVEN R. BECK, ESQ.  
5) Communications, Inc. CHARLES W. STEESE, ESQ.  
1801 California, Suite 5100  
Denver, Colorado 80202  
7) For Office of MICHELLE A. NORCROSS, ESQ.  
Consumer Counsel 1525 Sherman Street, Fifth Floor  
Denver, Colorado 80203  
9) For Staff of the ANNE BOTTERUD, ESQ.  
PUC 1525 Sherman Street, Fifth Floor  
Denver, Colorado 80203  
11) For the PUC Commission MANA JENNINGS-FADER, ESQ.  
1525 Sherman Street, Fifth Floor  
Denver, Colorado 80203  
13) For ICG CRAIG D. JOYCE, ESQ.  
2015 York Street  
Denver, Colorado 80205-5713  
14)  
15)  
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23)  
24)  
25)

Page 3

1) MR. SMITH: Well, let's get started.  
2) Just one administrative announcement. For those of you  
3) who signed up yesterday, no need to do that again. For  
4) those of you who were not here, please sign up on the  
5) sign-up sheet in the back. And if you have some new  
6) arrivals today, we would like a quick introduction of  
7) who those folks are. Start over here. This would be  
8) the guy who jumped from the PUC work to somewhere else.

9) MR. KLUG: I am Gary Klug. I now work for  
10) SCC Communications in Boulder. With me is Becca  
11) Boswell. She's also one of the new counsel for SCC as  
12) well.

13) MR. SMITH: Your name again?

14) MS. BOSWELL: Becca Boswell.

15) MR. THAYER: Rick Thayer from AT&T.  
16) (Discussion off the record.)

17) MR. SMITH: All right.

18) MR. BELLINGER: The first thing we'll do  
19) today is start out with the status of those issues that  
20) people were going to bring wording for other people to  
21) look at. Could we get a status report on those? Tom.

22) MR. DIXON: Tom Dixon with WorldCom. I  
23) can give you some status on where I am. U S West  
24) provided the pick-and-choose language that I had  
25) received by E-mail. And, of course, I have AT&T's

Page 4

1) proposal that was provided to us at the meeting  
2) yesterday. In addition, U S West has proposed 911  
3) language, which was an issue that we had with them, and  
4) that language we are taking back to our people.  
5) Mr. Priday will leave the proceedings and go on back  
6) and try to discuss not only that 911 language that's  
7) been provided, but also the pick and choose options  
8) that are out there right now, so we have some sense of  
9) that. So that language has been provided.

10) MR. BELLINGER: Any other? That's the  
11) only two you had.

12) MR. DIXON: Those are the only two, I  
13) believe, we had. We also came to an agreement on how  
14) to handle the ICNAM issues, which was the call  
15) database, and, I believe --

16) MR. BELLINGER: Call 911 database.

17) MR. DIXON: I believe our discussion that  
18) we had yesterday was how do we want to address this as  
19) a dispute. Now that we have reached an apparent  
20) impasse, I believe both U S West and MCI, and I think  
21) with AT&T's concurrence -- anybody else could chime  
22) in -- we would recommend that rather than making that  
23) a, so to speak, show-stopper, that that has to go up to  
24) the hearing commissioner. We will again address that  
25) issue, and any legal issues, at the end of the

- 1) as U S West unilaterally deems.
- 2) MR. THAYER: Rick Thayer, AT&T. I would also point out, this section appears to just apply to request for interduct. Interduct is the title of this.
- 5) MR. FREEBERG: That's true. Steve, I agree with the interpretations, and I think you could revise 10.8.4.3 to improve it. I think it does address more than interduct, so that looks like it needs work.
- 9) How about this? What if, considering both 10.8.2.8 and 10.8.4.3, what if AT&T proposes some explicit language and the legal mandate for that, and we consider that when we get that from you?
- 13) MS. DeCOOK: So, you want to take this off line?
- 15) MR. BELLINGER: Would you go through those paragraph numbers?
- 17) MR. FREEBERG: In AT&T's testimony, in this case they were focussing on 10.8.2.8. And I used 10.8.4.3 to suggest that it was our obligation to give them what they were looking for. And I volunteered that some explicit new language might be good. I volunteered to put that language together, if that would be better. Come back to AT&T with it. But I will still look for the legal basis for our being obligated to provide the explicit contract itself.

- 1) that's also something that we're standing firm on.
- 2) There's no legal obligation for that. In fact, there's an affirmative legal obligation that FCC sets up for providing that we're in full compliance, as AT&T agreed in Arizona, so we're also standing firm on that issue.
- 6) MS. DeCOOK: Becky DeCook. For the record, I don't think that that is true that we agreed to that. I think that's one of the issues that's being deferred to the MDU, Multiple Dwelling Units discussion. That is the context in which that issue came up in Arizona.
- 12) MR. BECK: That's not correct. There was never an issue raised in Arizona about setting up a separate process for getting right-of-way private agreements. There was never an issue raised as to that, and that clearly would have something to do with that workshop. You never raised it there.
- 18) MS. DeCOOK: Becky DeCook for AT&T. There was extensive discussion about U S West and the contracts with MDU owners in connection with access to right-of-way within those buildings. And, in my view, that issue was an MDU issue. That was deferred to a subgroup.
- 24) MR. BECK: That's true.
- 25) MS. DeCOOK: That's the discussion I am

- 1) MS. DeCOOK: Why don't we agree to take this discussion off line, and try to see if we can work out a solution.
- 4) MR. FREEBERG: Okay.
- 5) MS. DeCOOK: We can decide, off line, who writes the drafts, and what we draft, that sort of thing.
- 8) MR. FREEBERG: Okay.
- 9) MR. BELLINGER: What was that second paragraph? 10.8. --
- 11) MS. DeCOOK: -- 4.3.
- 12) MS. FADER: Mana Jennings for the commission. And, anyway, would that discussion also include the question of -- that Steve Beck and I were talking about, about clarifying this somewhat peculiar language?
- 17) MR. BECK: Here's what I understand to be going on here. I think what we're talking about here is this interduct reference, as well as the language that you point out is confusing, Mana. And what we aren't willing to take off-line is some private agreements with private owners of right-of-way that we won't confirm on.
- 24) As far as setting up a totally separate process just for providing those documents to a CLEC,

- 1) talking about.
- 2) MR. BECK: That's not what we have been talking about here. You talked about setting up a separate 10-day process circumventing this 45-day process pursuant to the FCC for right-of-way documents.
- 6) That was never brought up in Arizona, one way or the other.
- 8) MS. DeCOOK: Perhaps not, because the issue was deferred.
- 10) MR. BELLINGER: Warren.
- 11) MR. WENDLING: Warren Wendling of staff. Having not been through the joy of Arizona, I could care less. I am kind of tired of hearing that that wasn't brought up in Arizona. This is Colorado. If we've got issues in Colorado, I would like to talk about them in Colorado. Not worry because the -- whether they were or were not brought up in Arizona. That's just my opinion.
- 19) MR. SMITH: Bruce Smith. Warren, thank you for saving me the trouble of doing that.
- 21) MR. BELLINGER: Okay. You had your hand up, Letty.
- 23) MS. FRIESEN: I was just going to speak along the lines of what Warren and Bruce point out; that the commission, in its procedural order, has

1) determined that we are to engage in a collaboratively  
 2) developed record that exhaustively considers whether  
 U S West is in compliance with 271. They have also  
 4, determined, on page 10, that this is an investigatory  
 5) docket.

6) So, to the extent that AT&T has an issue  
 7) that we recognize, either in Arizona where we could  
 8) bring them up there, or issues that are recognized here  
 9) in Colorado, I think we have an obligation to bring  
 10) them to the fore. That's what this is for. And, so,  
 11) to the extent that Mr. Beck tries to shut us down  
 12) because we didn't bring it up in Arizona, I think  
 13) that's illegitimate, in light of what they have asked  
 14) this commission to do.

15) MR. BELLINGER: I think we handled that.

16) MR. BECK: If I may say, just on a  
 17) belated point, but not exactly the same point, is AT&T  
 18) was involved from Day 1 in this docket and never did  
 19) raise this issue in their written comments. They only  
 20) raised it today, that they want a separate process for  
 21) obtaining right-of-way documents beyond the process  
 22) that is already set up for poles, ducts and  
 23) right-of-way documents. By the same token, where it's  
 24) fair for you to, as you learn of new issues, not  
 25) sandbagging intentionally on issues, but, as you learn

1) of them, raise them in Colorado. On the other hand,  
 2) when you are as heavily represented as you, you  
 3) shouldn't be raising brand-new issues on Day 2 of the  
 4) workshop.

5) MR. BELLINGER: All right. We had a  
 6) proposal to review the language.

7) MS. DeCOOK: I believe we're taking it  
 8) off line.

9) MR. BELLINGER: Off line. When do you  
 10) think you can get back on this? Chuck.

11) MR. STEESE: I would like to talk after  
 12) the answer. I didn't have a response.

13) MR. BELLINGER: Both of you, you are not  
 14) responding to that?

15) MS. DeCOOK: I am looking at U S West.

16) MR. FREEBERG: I propose next week.

17) MS. DeCOOK: Can we do it on follow-on?  
 18) I think we'll report back then.

19) MR. FREEBERG: Can we move to the next  
 20) matter?

21) MR. STEESE: I have one question for Mr.  
 22) Thayer. In light of how this issue was so nicely  
 23) refined by Warren, I would be interested in knowing  
 24) what AT&T's position is. What legal authority are you  
 25) standing on to enable us to give you information about

1) private property and private contract? Is there some  
 2) authority for that? Is that something you just desire?

3) MR. THAYER: I think to do otherwise is  
 4) anticompetitive, and we have had experience of it's  
 5) been utilized in the anticompetitive manner.

6) MR. STEESE: So, are you aware of the MDU  
 7) docket that is pending before the FCC?

8) MR. THAYER: Yes, sir.

9) MR. STEESE: All of the questions they  
 10) raised with respect to the concerns of private property  
 11) owners and their questions about their jurisdiction to  
 12) even require anything with respect to that.

13) MR. THAYER: Yes, sir.

14) MR. STEESE: You are aware of those  
 15) issues then?

16) MR. THAYER: Yes.

17) MR. STEESE: That's all of the questions  
 18) I have.

19) MS. FADER: Mana Jennings Fader for the  
 20) commission. Just, again, I am doing a record thing  
 21) here. What is the docket at the FCC to which you  
 22) referred? You have some docket reference, and do you  
 23) have, for my purposes, a reference to the notice of  
 24) proposed rulemaking decision number so we can look it  
 25) up?

1) MR. BECK: Yes. The docket -- there are  
 2) two docket numbers. The WT Docket No. 99-217, and FCC  
 3) Docket No. 96-98. And the notice of proposed  
 4) rulemaking is FCC Docket 99-141. It was released July  
 5) 7th, 1999.

6) MS. FADER: Thank you.

7) MS. DeCOOK: Just one further comment to  
 8) Mr. Steese on our legal basis. U S West has an  
 9) obligation to provide us nondiscriminatory access to  
 10) poles, ducts and right-of-ways. In my view, that means  
 11) that you cannot enter into a sweet deal with an MDU  
 12) owner and then hide behind this privacy argument to  
 13) refuse to provide us the information that would  
 14) demonstrate whether we're getting nondiscriminatory  
 15) access or not.

16) MR. STEESE: I would like to respond to  
 17) that, if I could. I think Ms. DeCook accurately  
 18) describes our nondiscrimination obligation. We have an  
 19) obligation to provide carriers -- if we give AT&T  
 20) something, we have an obligation to provide a similar  
 21) thing to another carrier. The question here is what  
 22) about if one contracting party has absolutely nothing  
 23) to do with telecom. That is not covered by the act at  
 24) all. That is a serious question that FCC is raising.  
 25) It's in the notice of proposed rulemaking. There are

1) several paragraphs in the notice that Mr. Beck referred  
2) to which raise that very concern. So, that is a highly  
3) different issue than the one Ms. DeCook just discussed.

4) MR. BELLINGER: I thought the MDU issue  
5) was deferred.

6) MR. STEESE: That's a different question,  
7) Mr. Bellinger. The question that was deferred for MDUs  
8) had to do with access to MDUs for purposes -- and we  
9) deferred that. This goes beyond that. This goes  
10) beyond to the issue of what ability, if any, vis-a-vis  
11) a right of a private landowner, do we have here, and  
12) that that's a separate issue, and it's a little broader  
13) than just the MDU question. It arose in an MDU docket,  
14) but the question is larger than just MDUs.

15) MR. BECK: Just for the record, for  
16) people's reference, it's Paragraphs 52 through 63 in  
17) that FCC notice of proposed rulemaking that relates to  
18) this.

19) MR. BELLINGER: Warren.

20) MR. WENDLING: Again, I apologize if I  
21) have missed something. Do we have a similar teeing up  
22) of the MDU issue in Colorado?

23) MS. FRIESEN: May I respond?

24) MR. BELLINGER: Yes.

25) MS. FRIESEN: I believe that when we

1) attended one of our many procedural discussions in this  
2) proceeding, that I took the Arizona transcript, and  
3) with the MDUs issue, teed up by access, and put it on  
4) the record saying that AT&T, indeed, had some issues  
5) with that in Colorado. And those issues involve, if  
6) you look back at the Arizona transcript, it clearly  
7) involved the question of access to MDUs because of this  
8) overlying private contract that U S West gains with the  
9) MDU owners. So I think that AT&T has certainly  
10) attempted to tee it up, and let U S West know that we  
11) consider that to be placed into the MDU access issue,  
12) which was then deferred. Now, I am a little surprised  
13) that you are saying that's not the case. So, that's my  
14) understanding.

15) MR. STEESE: Let me respond to that.  
16) First of all, in Arizona, private rights or private  
17) contracts with the landowners was, for MDUs, was not  
18) discussed, but that, in Arizona, the issue is bigger  
19) than this. The issue is what ability do we have,  
20) irrespective of if it has to do with MDUs or not.  
21) We're not saying this is a question that's focussed in  
22) on MDUs. It just has arisen there because that's the  
23) place it has gotten the most interest from the FCC.

24) The question is what jurisdiction does  
25) this commission have to require a private landowner,

1) effectively, to turn over the details of his agreement  
2) and force the landowner to effectively enter into a  
3) similar agreement with AT&T or any other CLEC, for that  
4) matter. So, we're not attempting to -- I mean the MDU  
5) issues, we can take that in the future checklist items.  
6) I think this is a broader issue, though, than just  
7) MDUs. This has to do with private landowners  
8) generally.

9) MR. BELLINGER: I understand that's a  
10) broader issue, but I was also remembering that it was  
11) brought up under the MDU discussion. But, anyway.

12) MR. WENDLING: Procedural suggestion. In  
13) Colorado, that I think the MDU issue, as we thought of  
14) it, absent the release of private document issue, was,  
15) in Colorado, going to be taken up under the subloop  
16) unbundling --

17) MR. BELLINGER: Right.

18) MR. WENDLING: -- process. So, can we  
19) agree that this issue about private -- what's the good  
20) shorthand for this issue, about releasing documents.  
21) Can we take that up now? Is this the proper place for  
22) it, in this workshop? What's the -- no?

23) MR. BECK: Yeah.

24) MR. WENDLING: What's the brain trust  
25) say?

1) MS. FADER: Hey, you know what, we can  
2) caucus.

3) MS. QUINTANA: Caucus at lunch.

4) MR. DIXON: I have a procedural  
5) suggestion. Tom Dixon. We're about eight minutes from  
6) lunch. Would this be a good issue for the staff to  
7) caucus on, and maybe others, over lunch?

8) MS. FADER: Take up our lunch time.

9) MR. DIXON: I'm assuming you won't talk  
10) that long.

11) MR. BELLINGER: Take this at lunch.

12) MR. SMITH: So much fun, I lost track of  
13) time.

14) MR. STEESE: We have no objection to them  
15) talking over lunch. Our objection, let's deal with  
16) this private landowner issue in some workshop, because  
17) it's a more generic right-of-way kind of issue.

18) MR. BECK: You couldn't defer it to  
19) anything because it doesn't relate to anything else.

20) MR. WENDLING: Warren Wendling of staff.  
21) That was my point. I didn't think we ought to kick it  
22) from MDU like you might be doing in Arizona. I want to  
23) take it up -- but that's just my opinion, without  
24) consultation. I'll probably be told to shut up.

25) MR. BELLINGER: Do you want to go to



## 10.6 Directory Assistance List

### 10.6.1 Description

10.6.1.1 Directory Assistance List (DA List) Information consists of name, address and telephone number information for all end users of U S WEST and other LECs that are contained in U S WEST's directory assistance database and, where available, related elements required in the provision of Directory Assistance service to CLEC's end users. In the case of end users who have non-published listings, US WEST shall provide the end user's local numbering plan area ("NPA"), address, and an indicator to identify the non-published status of the listing to CLEC; however, US WEST will not provide the non-published telephone number.

10.6.1.2 U S WEST will provide DA List Information via initial loads and daily updates either by means of a magnetic tape or Network Data Mover (NDM) or as otherwise mutually agreed upon by the Parties. U S WEST will provide all changes, additions or deletions to the DA List Information overnight on a daily basis. The Parties will use a mutually agreed upon format for the data loads.

10.6.1.3 DA List Information shall specify whether the US WEST subscriber is a residential, business, or government subscriber, and the listings of other carriers will specify such information where it has been provided on the carrier's listing order.

10.6.1.4 In the event CLEC requires a reload of DA List Information from U S WEST's database in order to validate, synchronize or reconcile its database, a reload will be made available according to the rate specified in Exhibit A.

10.6.1.5 U S WEST and CLEC will cooperate in the designation of a location to which the data will be provided.

### 10.6.2 Terms and Conditions

10.6.2.1 U S WEST grants to CLEC, as a competing provider of telephone exchange service and telephone toll service, a non-exclusive, non-transferable, revocable license to use the DA List Information solely for the purpose of providing DA service to its local exchange end user customers, or for other incidental use by other carriers' customers, subject to the terms and conditions of this SGAT Agreement. As it pertains to the DA List Information in this SGAT Agreement, "Directory Assistance Service" shall mean the provision, via a live operator or a mechanized system, of telephone number and address information for an identified telephone service end user or the name and/or address of the telephone service end user for an identified telephone number. Should CLEC cease to be a telecommunications carrier, a competing provider of telephone exchange service or telephone toll service, this license automatically terminates. DA List information is provided AS IS, WITH ALL FAULTS.

10.6.2.2 CLEC will obtain and enter into its database daily updates of the DA List Information, will implement quality assurance procedures such as random testing for listing accuracy, and will identify itself to end-users calling its DA service either by company name or operating company number so that end-users have a means to identify with whom they are dealing.

~~10.6.2.2~~ 10.6.2.3 CLEC shall not use the DA List Information provided hereunder for any other purpose whatsoever. By way of example and not limitation, U S WEST's DA List Information shall not be used by CLEC for soliciting subscribers, telemarketing, creating or distributing marketing lists or other compilations of marketing information, or publishing any form of a directory, ~~or for providing directory assistance service to another CLEC or carrier's end-users.~~

~~10.6.2.3~~ 10.6.2.4 U S WEST shall retain all right, title, interest and ownership in and to the DA Listing Information it provides hereunder. CLEC acknowledges and understands that while it may disclose the names, addresses, and telephone numbers (or an indication of non-published status) of U S WEST's end users to a third party calling its Directory Assistance for such information, the fact that such end user subscribes to U S WEST's telecommunications services is confidential and proprietary information and shall not be disclosed to any third party.

~~10.6.2.4~~ 10.6.2.5 CLEC shall not sublicense, copy or allow any third party to access, download, copy or use the DA List Information, or any portions thereof, or any information extracted therefrom. Each Party shall take commercially reasonable and prudent measures to prevent disclosure and unauthorized use of U S WEST's DA List Information at least equal to the measures it takes to protect its own confidential and proprietary information, including but not limited to implementing adequate computer security measures to prevent unauthorized access to U S WEST's DA List Information when contained in any database.

10.6.2.5 ~~Unauthorized use of U S WEST's~~ U S WEST's DA List information, or any disclosure to a third party of the fact that an end user, whose listing is furnished in the DA list, subscribes to U S WEST's, another Local Exchange Carrier's, Reseller's or CMRS's telecommunications services shall be considered a material breach of this ~~SGA~~ Agreement and shall be resolved under the Dispute Resolution provisions of this ~~SGA~~ Agreement.

10.6.2.6 Within five (5) days after the expiration or earlier termination of this ~~SGA~~ Agreement, CLEC shall (a) return and cease using any and all DA List Information which it has in its possession or control, (b) extract and expunge any and all copies of such DA List Information, any portions thereof, and any and all information extracted therefrom, from its files and records, whether in print or electronic form or in any other media whatsoever, and (c) provide a written certification to U S WEST from an officer that all of the foregoing actions have been ~~completed.~~ completed. A copy of this certification may be provided to third party carriers if the certification pertains to such carriers' DA List Information contained in U S WEST's database.

10.6.2.7 CLEC is responsible for ensuring that it has proper security measures in place to protect the privacy of the end user information contained within the DA List Information. CLEC must remove from its database any telephone number for an end user whose listing has become non-published when so notified by U S WEST.——

10.6.2.8 Audits -- In accordance with Section 18, U S WEST may request a comprehensive audit of CLEC's use of the DA List Information. In addition to the terms specified in Section 18, the following also apply:

10.6.2.8.1 As used herein, "Audit" shall mean a comprehensive review of the other Party's delivery and use of the DA List Information provided hereunder and such other Party's performance of its obligations under this SGAT Agreement. Either Party (the "Requesting Party") may perform up to two (2) Audits per 12-12-month period commencing with the effective date of this SGAT Agreement. U S WEST shall be entitled to "seed" or specially code some or all of the DA List Information that it provides hereunder in order to trace such information during an Audit and ensure compliance with the disclosure and use restrictions set forth in Section 10.6.2.2 above.

10.6.2.8.2 ~~10.6.2.8.2~~—All paper and electronic records will be subject to audit.

10.6.2.9 CLEC recognizes that certain carriers who have provided DA List Information that is included in U S WEST's database may be third party beneficiaries of this Agreement for purposes of enforcing any terms and conditions of the Agreement other than payment terms with respect to their D A List Information.

10.6.2.10 U S WEST will provide a non-discriminatory process and procedure for contacting end users with non-published telephone numbers in emergency situations for non-published telephone numbers that are included in U S WEST's directory assistance database. Such process and procedure will be available to CLEC for CLEC's use when CLEC provides its own directory assistance and purchases U S WEST's Directory Assistance List product.

### **10.6.3 Rate Elements**

Recurring and non-recurring rate elements for DA List Information are described below and are contained in Exhibit A of this SGAT Agreement.

10.6.3.1 Initial Database Load -- A "snapshot" of data in the U S WEST DA List Information database or portion of the database at the time the order is received.

10.6.3.2 Reload -- A "snapshot" of the data in the U S WEST DA List Information database or portion of the database required in order to refresh the data in CLEC's database.

10.6.3.3 Daily Updates -- Daily change activity affecting DA List Information in the listings database.

10.6.3.4 One-Time Set-Up Fees -- Charges for special database loads.

10.6.3.5 Output Charges -- Media charges resulting from either the electronic transmission or tape delivery of the DA List Information, including any shipping costs.

### **10.6.4 Ordering**

10.6.4.1 CLEC may order the initial DA List Information load or update files for U S WEST's local exchange service areas in its 14 state operating territory or, where technically feasible, CLEC may order the initial DA List Information load or update files by U S WEST White Page Directory Code or NPA.

10.6.4.2 Special requests for data at specific geographic levels (such as NPA) must be negotiated in order to address data integrity issues.

10.6.4.3 CLEC shall use the Directory Assistance List Order Form found in the Interconnect & Resale Resource Guide.



Signature Page

## **9.13 Access to Signaling**

### **9.13.1 Description**

9.13.1.1 Qwest will provide CLEC with non-discriminatory access to signaling networks, including signaling links and Signaling Transfer Points (STP), call-related databases and service management systems (SMS) on an unbundled basis. The individual call-related databases and associated SMS are addressed later in this Section of the Agreement. Access to Qwest's signaling network provides for the exchange of signaling information between Qwest and CLEC necessary to exchange traffic and access call-related databases. Signaling networks enable CLEC the ability to send SS7 messages between its switches and Qwest's switches, and between CLEC's switches and those third party networks with which Qwest's signaling network is connected. CLEC may access Qwest's signaling network from CLEC switch via unbundled signaling and unbundled signaling transport elements between CLEC's switch and Qwest STPs. CLEC may access Qwest's signaling network from each of its switches via a signaling link pair between its switch and the Qwest STPs. CLEC may make such connection in the same manner as Qwest connects one of its own switches to STPs. Access to Qwest's signaling network for purposes of interconnection and the exchange of traffic is addressed earlier in this Agreement. The Common Channel Signaling used by the Parties shall be Signaling System 7.

9.13.1.2 Common Channel Signaling Access Capability/Signaling System 7 (CCSAC/SS7) provides multiple pieces of signaling information via the SS7 network. This signaling information includes, but is not limited to, specific information regarding calls made on associated Feature Group D trunks and/or LIS trunks, Line Information Database (LIDB) data, Local Number Portability (LNP), Custom Local Area Signaling Services (CLASS), 8XX set up information, Call Set Up information and transient messages.

9.13.1.3 Optional Features of CCSAC/SS7 are dependent on specific CLEC design requirements as well as the existence of adequate transport facilities. Transport facilities must be in place to accommodate Call Set Up of related Feature Group D and/or LIS messages, transient messages, and other ancillary services (e.g., LIDB data and 8XX set up information).

### **9.13.2 Terms and Conditions**

9.13.2.1 All elements of the unbundled CCSAC/SS7 arrangement will be developed on an individual case basis based on CLEC's design requirements. All of CLEC's unbundled design elements are subject to facility requirements identified below.

9.13.2.2 At a minimum, transport facilities must exist from CLEC's Point of Presence or Signaling Point of Interface (SPOI) to the identified Qwest STP location. Unbundled transport facilities to accommodate CCSAC/SS7 signaling may be developed using unbundled network elements (UNEs) as defined in this Section.

9.13.2.3 CLEC's CCSAC/SS7 design requirements will include, but are not limited to:

9.13.2.3.1 STP Port - This element is the point of termination to the signal switching capabilities of the STP. Access to a Qwest STP Port is required at a DS0 level.

9.13.2.3.2 Specific Point Code detail including the identification of CLEC's Originating, Destination and Signaling Options (*i.e.*, ISDN User Part [ISUP] or Transaction Capabilities Application Part [TCAP] requirements).

9.13.2.3.3 All signaling routing requirements will be identified in CLEC's design. CLEC will provide industry standard codes identifying Qwest end offices, tandems, sub-tending end offices and STPs that will be included in the designed unbundled signaling arrangement.

9.13.2.4 The CCSAC/SS7 unbundled arrangement must meet the following requirements:

9.13.2.4.1 Both Qwest and CLEC are obligated to follow existing industry standards as described in Bellcore documents including but not limited to GR-905 CORE, GR-954-CORE, GR-394-CORE and U-S-WEST Technical Publication 77342.

9.13.2.4.2 CLEC's switch or network SS7 node must meet industry and Qwest certification standards.

9.13.2.4.3 Unbundled transport facilities as identified in this Section of the Agreement must be provisioned at a minimum DS1 capacity at CLEC's Point of Presence or SPOI. This facility must be exclusively used for the transmission of network control signaling data.

9.13.2.4.4 Calling Party Number (CPN), or a reasonable alternative (*i.e.*, charge number) will be delivered by each Party to the other, Qwest in accordance with FCC requirements, when received from another carrier or from the telephone equipment of the end user.

9.13.2.4.5 Carrier Identification Parameter (CIP) will be delivered by CLEC to Qwest in accordance with industry standards, where technically feasible.

9.13.2.4.6 Provisions relating to call related databases (*i.e.*, 8XX, LIDB, Advanced Intelligent Network (AIN), etc.) are contained in other Sections of this Agreement. For example, LNP is described in the Ancillary Section, AIN, LIDB, 8XX and ICNAM are described in the UNE Section.

### ~~9.13.3 Rate~~ 9.13.3 Rate Elements

Rates and charges for the unbundled CCSAC/SS7 elements will be assessed based on CLEC's specific design requirements. Both nonrecurring and monthly recurring rates may be applicable. Message rating applies to each terminating call set up request (ISUP) traversing the Qwest signaling network. Messages which are transient in nature ~~Qwest~~ will be assessed message

## Signature Page

rates per terminating call set-up requests. Transient database messages (not destined for Qwest) will be assessed rating on a per transient database request (TCAP). Pricing detail is provided in Exhibit A of this Agreement. Rate elements for unbundled CCSAC/SS7 elements are:

9.13.3.1 Nonrecurring Rates. CCSAC Option Activation Charge – Assessed for adding or changing a point code in the signaling network. Qwest will charge CLEC based upon its selection of either basic or database activation, as detailed in Exhibit A of this Agreement.

### 9.13.3.2 Recurring Rates

9.13.3.2.1 STP Port - a monthly recurring charge, per connection into the STP.

9.13.3.2.2 Signal Formulation Charge - a per terminating call set up request charge for formulating the ISUP message at a SS7 SP/SSP.

9.13.3.2.3 Signal Transport Charge - a per terminating call set up request or data request charge for the transmission of signaling data between the STP and an end office SP/SSP. This rate element includes separate charges for ISUP and transient TCAP messages.

9.13.3.2.4 Signal Switching Charge - a per terminating call set up request or data request charge for switching an SS7 message at the local STP. This rate element includes separate charges for ISUP and transient TCAP messages.

### 9.13.4 Ordering

9.13.4.1 CCSAC/SS7 unbundled CLEC-designed elements will initially require design information from CLEC. Ordering for CCSAC/SS7 will be handled on an individual basis, using service activation meetings between CLEC and Qwest. CLEC will provide a Translation Questionnaire, Link Data Sheet and ASR during the service activation meetings.

9.13.4.2 Qwest will provide jeopardy notification, Design Layout Reports (DLR), Completion Notification and Firm Order Confirmation (FOC) in a non-discriminatory manner.

9.13.4.3 Due date intervals for CCSAC/SS7 will be established on an individual case basis.

### 9.13.5 Maintenance and Repair

The Parties will perform cooperative testing and trouble isolation to identify where trouble points exist. CLEC cross connections will be repaired by CLEC and Qwest cross connections will be repaired by Qwest. Maintenance and Repair processes are contained in this Agreement.

## 9.14 AIN Services

### 9.14.1 Description

AIN services are offered and available as an enhancement to CLEC's SS7 capable network structure and operation of AIN Version 0.1 capable switches.

9.14.1.1 AIN Customized Services (ACS) - Allows CLEC to utilize Qwest's AIN service application development process to develop new AIN services or features. ACS is determined on an individual case basis. The elements are also combined on an individual case basis to meet CLEC's request. Services developed through the ACS process can either be implemented in Qwest's network or handed off to CLEC to be installed in its own network.

9.14.1.2 AIN Platform Access (APA) - This service allows CLEC to provide to its end users any AIN service that is deployed for CLEC utilizing the ACS process in Qwest's SCP. Qwest is responsible for the provisioning of these AIN services. CLEC will be able to populate data for provisioning of the Call Processing Records (CPRs) stored in the SCP for AIN services. The process to provision, modify or update information in the AIN databases is predominately manual.

9.14.1.3 AIN Query Processing (AQP) - TCAP queries are used to collect information from the AIN database for use in call processing of the AIN based services above. CLEC launches a query from an AIN capable switch over the SS7 network to the Qwest Signal Transfer Point (STP). This query is directed to Qwest's SCP to collect data for the response to the originating switch.

#### **9.14.2 Terms and Conditions**

9.14.2.1 AIN Customized Services (ACS) - Since each proposed service is unique and complex, when ACS is ordered, Qwest conducts a feasibility study which estimates the amount of time and cost necessary to develop the proposed service or enhancement. The charges associated with the feasibility analysis, development and implementation shall be established pursuant to the BFR process as described in this Agreement. The service is developed and tested in a Qwest lab environment. If the service is implemented in Qwest's network, it goes through network test prior to implementation.

#### **9.14.2.2 AIN Platform Access (APA)**

9.14.2.2.1 Prior to activation of the AIN feature, CLEC's switch point code must be activated for AIN processing on the CCSAC/SS7 link (described in this Section) that is transporting the AIN query.

9.14.2.2.2 Qwest will provide requirements for data load preparation and delivery by CLEC.

9.14.2.2.3 In order to make AAOS service work, service logic must be loaded in the AIN application to provision an AIN service on the platform for CLEC. Qwest is responsible for provisioning the Call Processing Record (CPR) in the SCP.

9.14.2.2.4 Each end user line must be provisioned by the facility owner. CLEC is responsible for setting the AIN trigger in its switch.

Signature Page

9.14.2.2.5 AIN Query Processing. Qwest will certify and test CLEC switch for AIN message transmission to assure quality performance as described in this Section. Qwest and CLEC will test cooperatively.

### 9.14.3 Rate Elements

9.14.3.1 AIN Customized Services (ACS). Hourly rates are applicable for each component of the ACS service according to the estimates determined in the feasibility analysis. The specific charges for each component and the terms and conditions for payment shall be described in the BFR response described above.

9.14.3.2 AIN Platform Access (APA). APA is billed a monthly recurring and a one-time nonrecurring charge for each AIN feature activated, per telephone number.

9.14.3.3 AIN Query Processing. The AIN service rates will be developed and assessed in accordance with the specific service requested by CLEC.

### 9.14.4 Ordering

9.14.4.1 ACS is ordered on an individual case basis and is coordinated through the Qwest Account Manager and Product Manager. Due date intervals for the proposal phase are detailed below:

- (a) Within five business days of an inquiry, Qwest will provide CLEC with the Service Request Form.
- (b) Within ten business days of receiving the Service Request, Qwest will provide a written acknowledgment of receipt.
- (c) Within 15 business days of acknowledgment, Qwest will assess the Service Request and prepare for a meeting with CLEC to review the Service Request.
- (d) Qwest will be available to attend a Service Request Meeting within five business days of the completion of the assessment. The Service Request will be considered accepted once Qwest and CLEC come to an agreed-upon understanding of the service feature set and scope.
- (e) Within 30 business days of acceptance of the Service Request, Qwest will provide a response, the Service Evaluation, which includes an initial service evaluation and development time and cost estimates.
- (f) Within 90 business days of end-user approval of the Service Evaluation, Qwest will complete a Feasibility Analysis, which includes development time and costs.

Remaining deliverables are negotiated with CLEC so that mutually-agreeable due dates based on service complexity are established.

9.14.4.2 APA is ordered using the LSR form.

## Signature Page

9.14.4.3 In the event that miscellaneous charges apply, they will be applied consistent with the application used for equivalent services ordered by Qwest end users.

9.14.4.4 Upon receipt of a complete and accurate LSR, Qwest will load CLEC records into the AIN database within ten days. Qwest will also establish translations at the STP to allow query access from CLEC switch within ten days.

9.14.4.5 Completion notification will be either by e-mail or by fax.

9.14.4.6 AIN Query Processing (AQP) – is specific to the service ordered and must be established at the time of the APA ordering process.

## 9.15 Interconnection to Line Information Database (LIDB)

### 9.15.1 Line Information Database (LIDB) Storage

#### 9.15.1.1 Description -- LIDB Storage

9.15.1.1.1 Line Information Database (LIDB) stores various telephone line numbers and Special Billing Number (SBN) data used by operator services systems to process and bill Alternately Billed Services (ABS) calls. The operator services system accesses LIDB data to provide originating line (calling number), billing number and terminating line (called number) information. LIDB is used for calling card validation, fraud prevention, billing or service restrictions and the sub-account information to be included on the call's billing record.

9.15.1.1.2 Bellcore's GR-446-CORE defines the interface between the administration system and LIDB including specific message formats (Bellcore's TR-NWP-000029, Section 10).

#### 9.15.1.2 Terms and Conditions -- LIDB Storage

CLEC will provide initial data, add, update or delete data, and license said data to QwestU S WEST for placement in Qwest'sU S WEST's LIDB. CLEC will provide and maintain necessary information to enable QwestU S WEST to provide LIDB services. CLEC will ensure, to the extent possible, the accuracy of the data provided to QwestU S WEST for storage in Qwest'sU S WEST's LIDB, and supply updated and changed data in a timely manner.

#### 9.15.1.3 Rate Elements -- LIDB Storage

LIDB Data Storage does not have a recurring charge. When electronic access becomes available, a one-time non-recurring fee may be charged for the initial load of CLEC's data into LIDB.

#### 9.15.1.4 Ordering -- LIDB Storage

QwestU S WEST will be responsible for loading and updating CLEC's line records into the LIDB database from the data provided by CLEC. The establishment of CLEC line records will be provisioned through an interim manual process. Updates, adds, changes and deletions subsequent to the initial file for establishment must be e-mailed to

Qwest U S WEST. Emergency updates (adds, changes, deletes) may be faxed. CLEC is responsible for the accuracy of the data which is sent to Qwest U S WEST. Inquiries from CLEC must be faxed to Qwest U S WEST using the approved forms appropriate for the type of inquiry requested.

## 9.15.2 Line Validation Administration System (LVAS) Access

### 9.15.2.1 Description -- LVAS Access

9.15.2.1.1 LVAS is the comprehensive administrative management tool which loads the LIDB data and coordinates line record updates in Qwest's U S WEST's redundant LIDB databases. LVAS is the vehicle which audits stored information and assures accurate responses.

9.15.2.1.2 LVAS access is available only to facility-based CLECs.

### 9.15.2.2 Terms and Conditions -- LVAS Access

9.15.2.2.1 CLEC will provide Qwest U S WEST with the following information:

- a) The LIDB service requested (*i.e.*, calling name, calling cards, Originating Line Number Screening (OLNS), ABS, etc.);
- b) CLEC's Revenue Accounting Office (RAO), Operating Customer Number (OCN), and/or Local Service Provider Identification (LSPI);
- c) The NPA NXX and signaling point codes for the operator or end office switches from which queries are launched;
- d) The identity of CLEC's SS7 provider for Number Portability, ABS, OLNS and calling name;
- e) The identity of CLEC's operator services provider for ABS queries;
- f) A forecast for changes in volumes of line records, both increases and decreases; and
- g) The contact names and fax numbers of all CLEC personnel to be contacted for fraud notification and LIDB data administration.

9.15.2.2.2 CLEC will e-mail to Qwest U S WEST all updates, adds, changes, and deletions to the initial file in ASCII format.

9.15.2.2.3 Within one business day of receipt of the file, Qwest U S WEST will attempt to load the file into LVAS. If Qwest U S WEST successfully loads the file into LVAS, the originator of CLEC's files will be notified by Qwest U S WEST.

9.15.2.2.4 In the event that Qwest U S WEST is not successful in loading the file because errors were detected, Qwest U S WEST will e-mail the file back to CLEC with an error notice.

9.15.2.2.5 Reserved for future use.

9.15.2.2.6 Qwest U S WEST will provide to CLEC the necessary methods and procedures when the LVAS electronic interface becomes available.

### 9.15.2.3 Rate Elements -- LVAS Access

9.15.2.3.1 ~~LIDB Line Record Initial Load Charge - CLEC shall reimburse Qwest as shown in Exhibit A, for the initial loading~~ U S WEST for all charges U S WEST incurs relating to the input of CLEC's end user line record information, ~~for LIDB and/or ICNAM~~, including the formatting of data so that it may be loaded into LVAS. ~~If the initial load of ICNAM records are LVAS. provided with the initial load of LIDB records, a single LIDB/ICNAM charge as described in Exhibit A applies. If initial ICNAM records are not provided by CLEC for loading together with the initial LIDB record load, a LIDB/ICNAM charge applies to the ICNAM load, and a second LIDB/ICNAM charge applies to the LIDB load.~~

9.15.2.3.2 Mechanized Service Account Update - LVAS Access is the product which allows CLEC to add, update and delete telephone line numbers from the Qwest U S WEST LIDB for CLEC's end users. Qwest U S WEST will charge CLEC for each addition or update processed.

9.15.2.3.3 Individual Line Record Audit - CLEC may verify the data for a given ten digit line number using an inquiry of its end user data.

9.15.2.3.4 Account Group Audit - CLEC may audit an individual Account Group NPA-NXX.

9.15.2.4 Expedited Request Charge for Manual Updates - CLEC may request an expedited manual update to the LIDB database that requires immediate action (*i.e.*, deny PIN number). Qwest U S WEST shall assess CLEC an expedited request charge for each manual update.

9.15.2.5 Ordering - LVAS Access.

LVAS report queries from CLEC must be faxed to Qwest U S WEST MIDAS center using the approved forms appropriate for the type of inquiry requested.

9.15.2.6 Billing - Line Validation Administration System (LVAS) Access.

When electronic access becomes available, a per query rate may apply to each Mechanized Service Account Update, Individual Line Record Audit, Account Group Audit, and Expedited Request Charge for Manual Updates.

**9.15.3 LIDB 9.15.3 LIDB Query Service****9.15.3.1 Description - LIDB Query Service**

9.15.3.1.1 LIDB Query Service provides information to query originators for use in processing Alternately Billed Services (ABS) calls. ABS call types include calling card, billed to third number, and collect calls.

9.15.3.1.2 On behalf of CLEC, QwestU S WEST will process LIDB queries from query originators (Telecommunications Carriers) requesting CLEC telephone line number data. QwestU S WEST allows LIDB query access through QwestU S WEST regional STPs.

**9.15.3.2 Terms and Conditions - LIDB Query Service**

9.15.3.2.1 All LIDB queries and responses from operator services systems and end offices are transmitted over a CCS network using a Signaling System 7 (SS7) protocol (TR-NWT-000246, Bell Communications Research Specification of Signaling System 7).

9.15.3.2.2 The application data needed for processing LIDB data are formatted as Transaction Capabilities Application Part (TCAP) messages. TCAP messages may be carried as an application level protocol using SS7 protocols for basic message transport.

9.15.3.2.3 The SCP node provides all protocol and interface support. CLEC SS7 connections will be required to meet Bellcore's GR905, TR954 and U S WEST's Technical Publication 77342 specifications.

9.15.3.2.4 QwestU S WEST will include CLEC-provided data in Qwest'sU S WEST's LIDB in accordance with the ~~LIDB Storage Section, section 9.15.1 (LIDB Storage)~~, and allow access to the data subject to QwestU S WEST negotiated agreements with Telecommunications Carriers, allowing CLEC's end users the same benefits of said agreements as enjoyed by QwestU S WEST end users. QwestU S WEST will update CLEC data, as requested by CLEC. QwestU S WEST will perform services provided hereunder and determine the applicable standard for the data, in accordance with operating methods, practices and standards in effect. ~~Qwest shall exercise reasonable efforts to provide accurate and effect. complete LIDB information in Qwest's LIDB database.~~

**9.15.3.3 Rate Elements - LIDB Query Service**

9.15.3.3.1 The recurring charges for LIDB queries for Alternately Billed Services (ABS) calls processed by an Operator Services Switch are contained in Exhibit A of this Agreement.

9.15.3.3.2 LIDB Query rates apply in addition to all applicable CCSAC charges.

#### 9.15.3.4 Ordering - LIDB Inquiry Service

9.15.3.4.1 LIDB requires a connection to the Common Channel Signaling Network (CCSN). Therefore, CLEC must have Common Channel Signaling Access Capability (CCSAC).

9.15.3.4.2 Provisioning of LIDB is done via the LIDB Access Request Form. Upon receipt of an accurate LIDB Access Request Form, QwestU S WEST will complete all necessary work and service will be available within seven (7) business days.

9.15.3.4.3 In addition to the LIDB Request Form, hub providers requesting LIDB services on behalf of CLECs must furnish QwestU S WEST a Proof of Authorization to prove that they have CLEC authorization to provide these services. This letter must be on file prior to provisioning.

### 9.15.4 Fraud Alert Notification

#### 9.15.4.1 Description - Fraud Alert Notification

The WatchDog Fraud Management System (FMS) processes the LIDB query detail records to establish patterns and identify potential fraudulent situations. WatchDog issues an alert to the QwestU S WEST Fraud Investigation Unit (FIU). QwestU S WEST will notify CLEC of system alerts on CLEC end user lines.

#### 9.15.4.2 Terms and Conditions - Fraud Alert Notification

QwestU S WEST will notify CLEC of system alerts on CLEC end user lines. At the direction of CLEC, QwestU S WEST will institute a block to prevent any further occurrence of fraud or uncollectible toll charges in accordance with practices used by QwestU S WEST for its own end users. Such practices include, but are not limited to, removing from valid data those data which incur fraud or uncollectible toll charges.

#### 9.15.4.3 Rate Elements - Fraud Alert Notification

~~Fraud Alert Notification does not have an additional charge.~~ will be billed on a time and material basis per alert.

#### 9.15.4.4 Ordering - Fraud Alert Notification

As part of the planning for LIDB Data Storage, CLEC will provide QwestU S WEST a contact for fraud notification. The contact must be available 24 hours a day, 7 days a week. QwestU S WEST will not take any action when fraud notification is received other than to notify CLEC. CLEC may request that QwestU S WEST deny a calling card. Any request of this type must be followed up by a fax as a confirmation.

## 9.16 8XX Database Query Service

9.16.1 8XX Database Query Service is an originating service which provides the Carrier Identification Code (CIC) and/or the vertical features associated with the 8XX number. Call routing information in the SMS/800 Database reflects the desires of the owner of the 8XX number as entered in the SMS/800 by its chosen responsible organization.

### 9.16.2 8XX Optional Features

9.16.2.1 POTS Translation - Delivers the ten-digit Plain Old Telephone Service (POTS) number to CLEC. To determine that the call originated as an 8XX number, the trunk group must be provisioned with Automatic Number Identification (ANI). ANI digit 24 will be delivered to the trunk group.

9.16.2.2 Call Handling and Destination Features - This will allow routing options by specifying a single carrier, multiple carriers, single termination or multiple terminations. Multiple terminations may require the POTS translation feature. Variable routing options are:

- a) Routing by originating NPA-NXX-XXXX;
- b) Time of day;
- c) Day of week;
- d) Specified date; and
- e) Allocation by percentage.

### 9.16.3 Rate Elements

9.16.3.1 The recurring charges for 8XX Database Query Service, POTS Translation, and Call Handling and Destination Features are contained in Exhibit A of this Agreement.

9.16.3.2 The rates for 8XX Database Query Service only apply to queries from CLEC's switch to the QwestU S WEST 8XX Database. If CLEC routes 8XX traffic to QwestU S WEST for delivery to an interexchange carrier, the call shall be handled as jointly provided switched access. If the CLEC routes such traffic to QwestU S WEST without performing the query, QwestU S WEST shall perform the query in accordance with its switched access tariff.

9.16.3.3 Non-recurring Options Activations Charge will apply for CLEC to activate 8XX Database Query Service. These rate elements are contained in the CCSAC/SS7 Section of Exhibit A.

### 9.16.4 Ordering Process

9.16.4.1 CLEC shall order access to QwestU S WEST local STP (links and ports) prior to or in conjunction with 8XX Database Query Service.

9.16.4.2 The information and time intervals to order STP (links and ports) are contained in the Common Channel Signaling Capability/SS7 Section of this Agreement. STP links and ports are required with 8XX Database Query Service.

Signature Page

9.16.4.3 8XX Database Query Service shall be provided within 30 days after CLEC has access to the QwestU S WEST local STP.

### 9.16.5 Technical Requirements

9.16.5.1 QwestU S WEST shall make Qwest'sU S WEST's Toll Free Number Database available, through its STPs, for CLEC to query from CLEC's designated switch.

9.16.5.2 The Toll Free Number Database shall return carrier identification and, where applicable, the queried toll free number, translated numbers and instructions as it would in response to a query from a QwestU S WEST switch.

### 9.16.6 Interface Requirements

The signaling interface between CLEC's or other local switch and the Toll-Free Number Database shall use the TCAP protocol as specified in the technical references together with the signaling network interface.

### 9.16.7 Technical References

SCPs/Databases shall be consistent with the following technical references:

9.16.7.1 GR-246-CORE, Bell Communications Research Specification of Signaling System Number 7, Issue 1 (Bellcore, December 1994);

9.16.7.2 GR-1432-CORE, CCS Network Interface Specification (CCSNIS) Supporting Signaling Connection Control Part (SCCP) and Transaction Capabilities Application Part (TCAP) (Bellcore, March 1994);

9.16.7.3 GR-954-CORE, CCS Network Interface Specification (CCSNIS) Supporting Line Information Database (LIDB) Service 6, Issue 1, Rev. 1 (Bellcore, October 1995);

9.16.7.4 GR-1149-CORE, OSSGR Section 10: System Interfaces, Issue 1 (Bellcore, October 1995) (Replaces TR-NWT-001149);

9.16.7.5 GR-1158-CORE, OSSGR Section 22.3: Line Information Database 6, Issue (Bellcore, October 1995); and

9.16.7.6 GR-1428-CORE, CCS Network Interface Specification (CCSNIS) Supporting Toll Free Service (Bellcore, May 1995).

## 9.17 InterNetwork Calling Name (ICNAM)

### 9.17.1 Description

9.17.1.1 InterNetwork Calling Name (ICNAM) is a QwestU S WEST service that allows CLEC to query Qwest'sU S WEST's ICNAM database and secure the listed name information for the requested telephone number (calling number), in order to deliver that information to CLEC's end users.

9.17.1.2 ICNAM database contains current listed name data by working telephone number served or administered by Qwest, U S WEST, including listed name data provided by other Telecommunications Carriers participating in the Calling Name Delivery Service arrangement.

### 9.17.2 Terms and Conditions

9.17.2.1 In response to queries properly received at Qwest's U S WEST's ICNAM database, Qwest U S WEST will provide the listed name of the calling party that relates to the calling telephone number (when the information is actually available in Qwest's U S WEST's database and the delivery thereof is not blocked or otherwise limited by the calling party or other appropriate request). CLEC is responsible for properly and accurately launching and transmitting the query from its serving office to the Qwest U S WEST database.

9.17.2.2 In response to proper signaling queries, Qwest U S WEST will provide CLEC with ICNAM database end user information if the calling party's end user information is stored in the Qwest U S WEST ICNAM database. As a result, the called Party's end user can identify the calling party listed name prior to receiving the call, except in those cases where the calling party end user has its ICNAM information blocked.

9.17.2.3 Qwest U S WEST will allow CLEC to query Qwest's U S WEST's ICNAM database in order to obtain ICNAM information which identifies the calling party end user.

9.17.2.4 The ICNAM service shall include the database dip and transport from Qwest's U S WEST's regional STP to Qwest's U S WEST's SCP where the database is located. Transport from CLEC's network to Qwest's U S WEST's local STP is provided via Links, which are described and priced in the CCSAC/SS7 Section of this Agreement.

9.17.2.5 CLEC shall send queries conforming to the American National Standards Institute's (ANSI) approved standards for SS7 protocol and per the following specification standard documents:

- a) Bellcore-SS7 Specification, TR-NPL-000246;
- b) ANSI-SS7 Specifications;
- c) Message Transfer Part T1.111;
- d) Signaling Connection Control Part T1.112;
- e) Transaction Capabilities Application Part T1.114;
- f) Bellcore-CLASS Calling Name Delivery;
- g) Generic Requirements, TR-NWT-001188; and
- h) Bellcore-CCS Network Interface Specifications, TR-TSV-000905.

9.17.2.6 CLEC acknowledges that transmission in the above protocol is necessary for Qwest U S WEST to provision its ICNAM services. CLEC will adhere to other applicable standards, which include Bellcore specifications defining service applications, message types and formats. Qwest U S WEST may modify its network pursuant to other specification standards that may become necessary to meet the prevailing demands

within the United States telecommunications industry. All such changes shall be announced in advance and coordinated with CLEC.

9.17.2.7 All queries to Qwest's U S WEST's ICNAM database shall use a subsystem number (the designation of application) value of 250 with a translation type value of 5. CLEC acknowledges that such subsystem number and translation type values are necessary for Qwest U S WEST to properly process queries to Qwest's U S WEST's ICNAM database.

9.17.2.8 CLEC acknowledges and agrees that SS7 network overload due to extraordinary volumes of queries and/or other SS7 network messages can and will have a detrimental effect on the performance of Qwest's U S WEST's SS7 network. CLEC further agrees that Qwest, U S WEST, in its sole discretion, shall employ certain automatic and/or manual overload controls within the Qwest U S WEST SS7 network to safeguard against any detrimental effects. Qwest U S WEST shall report to CLEC any instances where overload controls are invoked due to CLEC's SS7 network, and CLEC agrees in such cases to take immediate corrective actions as necessary to cure the conditions causing the overload situation.

9.17.2.9 Qwest U S WEST shall exercise reasonable efforts to provide accurate and complete ICNAM information in Qwest's U S WEST's ICNAM database. The ICNAM information is provided on an as-is Basis with all faults. Qwest U S WEST does not warrant or guarantee the correctness or the completeness of such information; however, Qwest U S WEST will access the same ICNAM database for CLEC's queries as Qwest U S WEST accesses for its own queries. In no event shall Qwest U S WEST have any liability for system outage or inaccessibility or for losses arising from the authorized use of the ICNAM data by CLEC.

9.17.2.10 CLEC shall arrange its Calling Party Number based services in such a manner that when a calling Partyparty requests privacy, CLEC will not reveal that caller's name or number to the called Partyparty (CLEC's end user). CLEC will comply with all FCC guidelines and, if applicable, the appropriate Commission rules, with regard to honoring the privacy indicator.

9.17.2.11 Qwest U S WEST retains full and complete ownership and control over the ICNAM database and all information in its database. CLEC agrees not to copy, store, maintain or create any table or database of any kind from any response received after initiating an ICNAM query to Qwest's U S WEST's database. CLEC will prohibit its end users from copying, storing, maintaining, or creating any table or database of any kind from any response provided by CLEC to its end user after CLEC initiated an ICNAM query to Qwest's U S WEST's ICNAM database.

9.17.2.12 Qwest U S WEST reserves the right to temporarily discontinue the ICNAM service if CLEC's incoming calls are so excessive as determined by Qwest U S WEST to jeopardize the viability of the ICNAM service.

### 9.17.3 Rate Elements

9.17.3.1 ~~Rate elements for ICNAM services are contained in Exhibit A of this Agreement. If the initial load of ICNAM records are provided with the initial load of LIDB records, a single LIDB/ICNAM charge as described in Exhibit A applies. If initial ICNAM records are not provided~~

Signature Page

by CLEC for loading together Agreement.

~~with the initial LIDB record load, a LIDB/ICNAM charge applies to the ICNAM load, and a second LIDB/ICNAM charge applies to the LIDB load.~~

#### **9.17.4 Billing**

9.17.4.1 CLEC agrees to pay QwestU S WEST for each and every query initiated into Qwest'sU S WEST's ICNAM database for any information, whether or not any information is actually provided.

9.17.4.2 ICNAM rates will be billed to CLEC monthly by QwestU S WEST for the previous month.

#### **9.17.5 Ordering Process**

9.17.5.1 CLEC shall order access to QwestU S WEST local STP (links and ports) prior to or in conjunction with ICNAM Services. ~~The UNE – Access to Signaling Section 9.13 contains information on ordering SS7 and STP links and ports.~~

9.17.5.2 If CLEC has an existing database of names that needs to be compiled into the appropriate format, ICNAM service will begin 30 days after QwestU S WEST has received from CLEC its database information.

9.17.5.3 If CLEC has no existing end-user base, then ICNAM service will begin seven (7) days after QwestU S WEST receives the CLEC order.



## CERTIFICATE OF SERVICE

I certify that the original and 10 copies of the Comments of AT&T Regarding Staff's Compliance Reports and Proposed Findings of Fact and Conclusions of Law for Checklist Items 3, 7 and 10 in Docket No. T-00000A-97-0238 were sent by overnight delivery on January 19, 2001 to:

Arizona Corporation Commission  
Docket Control – Utilities Division  
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Phoenix, AZ 85007

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and that a true and correct copy was sent by overnight delivery on January 19, 2001 to:

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